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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 713.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., *Appellants*,

v.

THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET ALS., *Appellees*.

Appeal From the District Court of the United States for the District of Columbia.

BRIEF FOR APPELLEES.

J. NINIAN BEALL,
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Attorneys for Appellees.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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CITATIONS.

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BRIEF FOR APPELLEES.

This is an appeal from the decree of the District Court of the United States for the District of Columbia, directing the Interstate Commerce Commission to take jurisdiction of the appellees' petition in the matter of establishing reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle.

Statement.

The opinion below, jurisdiction, questions presented, and statement of the case, are set forth in the brief for the appellants, and will not be repeated here.

The pertinent provisions of the Motor Carrier Act, the Fair Labor Standards Act, and the Trucking Code under the National Industrial Recovery Act are set forth in the Appendix.

The real issue involved here is whether Congress in giving the Commission jurisdiction to regulate interstate commerce by motor carriers, vested in the Commission that full, complete and flexible power necessary and proper to effectuate the policies which Congress declared; or whether Congress made an idle declaration of policy, restricted the power of the Commission, and divided jurisdiction over the important subject of regulating qualifications and hours of service of employees between two federal agencies, forty-eight states and innumerable municipalities, without any objective plan or basis for coordination of regulations. The latter is the exact result which all of the appellants' arguments lead to.

The substance of the position taken by appellant Interstate Commerce Commission is the alleged inconvenience of handling the subject, and the Labor Department would like to enlarge its jurisdiction. The principles of law and problems of the industry have from the beginning been sacrificed to convenience, even to the extent of failure and refusal to hold a hearing.

Appellees petitioned the Interstate Commerce Commission to exercise its jurisdiction under Sec. 204 of the Motor Carrier Act and to prescribe qualifications and maximum hours of service for employees of motor carriers.

The Commission denied its jurisdiction, denied appellees a hearing and dismissed the petition without ascertaining the facts. In no proceedings had the Commission heard any testimony dealing with the subject matter of the petition.

The need for a hearing in such cases was aptly stated by Mr. Justice Frankfurther, "The recognized practices of an industry give life to the dead words of a statute dealing with it." *United States* v. *Maher*, 307 U. S. 148.

Appellees allege (Bill, paragraph 8; R. 3) and appellants admit (R. 25, 27, 32), "The business of transporting passengers and property in interstate and foreign commerce by motor vehicle for hire has long been recognized as one impressed with a public interest and requiring regulation to eliminate unfair and destructive competitive practices, to promote economical and efficient service, and to establish standards of safety for the protection of the public."

The District Court, of necessity, decided the case on the plain language of the statute and upon consideration of the *pro forma* aids to construction, such as matters contained in the legislative history of the law and the reports of the Commission.

The District Court unanimously found that the letter of the statute plainly conferred general jurisdiction on the Commission. Two justices found that both the letter and purposes of the statute conferred jurisdiction on the Commission. One justice dissented from the result and apparently based the dissent on the ground that Congress did not mean what it said, and that the Commission would be required to deal with matters and subjects foreign to transportation.

Summary of Argument.

I. Section 204(a) (1) and (2) of the Motor Carrier Act is clear in terms and meaning, confers full jurisdiction upon the Commission, and there is no occasion for construction.

The Motor Carrier Act, 1935, contains a broad declaration of policy, and a comprehensive plan for the regulation of common and contract carriers by motor vehicle in interstate commerce. Section 202 of the Act declares the congressional policy and confers jurisdiction upon the Commis-

sion. It declares a policy to include fostering sound economic conditions, promoting adequate, economical and efficient service, and the prevention of unfair or destructive competitive practices; and it vests in the Interstate Commerce Commission jurisdiction to regulate transportation by motor vehicle, the procurement thereof and the provision of facilities therefor. The powers and duties conferred upon the Commission in and by Section 204(a) (1) and (2) are to regulate such carriers "as provided in this part" ("part" means the entire Act as it was enacted as Part II of the Interstate Commerce Act); and "to that end" the Commission is authorized to "establish reasonable requirements" for (1) continuous and adequate service, (2) transportation of baggage and express, (3) uniform systems of accounts, records and reports, (4) preservation of records, (5) *qualifications and maximum hours of service of employees*, and (6) safety of operations and equipment.

As to the power of the Commission to establish requirements with respect to qualifications and maximum hours of service of employees, it is significant that the term "employees" is not limited, and that the only limitation upon the authorized requirements is that they be "reasonable". Thus, it is apparent that the terms of Section 204(a) (1) and (2) apply with respect to *all* employees of common and contract carriers by motor vehicle; and, as no "reasonable requirement" could ever cause a harsh, oppressive or absurd result, there is no reason to construe the section to mean anything else.

II. The legislative history of the Motor Carrier Act and related acts discloses a clear congressional intention that the Commission shall regulate hours of service and qualifications for all purposes within the declaration of policy and legislative standards set forth in Section 204, and that the Commission's jurisdiction shall be exclusive.

An analysis of the background of the regulation of the trucking industry under the National Industrial Recovery Act, and of the presentations made before and in Congress

indicate clearly that Congress intended to confer full jurisdiction upon the Commission to establish requirements as to qualifications and hours of service of employees of common and contract carriers by motor vehicle.

The matter of the Commission's jurisdiction over qualifications and maximum hours of service of employees was before Congress when the Fair Labor Standards Act was enacted. The Commission's jurisdiction was recognized by the exemption put in Section 13(b) of the Fair Labor Standards Act. The different language employed with respect to motor carriers is the result of the difference in the private carrier situation. It clearly contemplates an exemption of all employees of common and contract carriers by motor vehicle.

Quite recently the Congress has taken action upon pending transportation legislation which shows that it considers the Commission's jurisdiction to transcend considerations of safety of operaton.

III. The nature of interstate transportation business makes it necessary that one administrative agency have power to regulate qualification and maximum hours of service for all business purposes, and the Commission is the only agency charged by Congress with the duty of executing its transportation policy.

One of the cardinal requisites to regulation of transportation agencies is flexibility. This was clearly made to appear in the hearings on the bills which became the Motor Carrier Act. Of almost equal importance is the need for avoiding conflicting jurisdiction. This was emphasized before Congress.

There can be no divided jurisdiction between the Interstate Commerce Commission, the Administrator, Wage and Hour Division, Department of Labor, the forty-eight states, and the innumerable municipalities, with respect to the qualifications and hours of service of employees in their relations to any phase of interstate transportation by motor vehicle. The states cannot regulate interstate commerce,

and certainly municipal governments cannot do so; yet, the argument made by appellants would lead to that result, for if the Fair Labor Standards Act applies, then it carries over into effect any state statute or municipal ordinance more restrictive in terms. The position taken by appellants would lead to an unconstitutional result, because authority would be delegated to states without any standards or policy declared.

ARGUMENT.

Point 1.

Section 204(a)(1) and (2) of the Motor Carrier Act is clear in terms and meaning; confers full jurisdiction on the Commission; and there is no occasion for construction.

Section 204 is the section of the Motor Carrier Act which confers powers and duties upon the Interstate Commerce Commission. It authorizes the Commission to regulate common and contract carriers by motor vehicle "as provided in this part, and to that end the Commission may establish reasonable requirements with respect to * * * qualifications and maximum hours of service of employees."

The language of the statute is plain, and the District Court so found.

Where the language is plain, there is no room for construction. The rule that "the province of construction lies wholly within the domain of ambiguity," is too well established to require extensive citations of authorities. Thus, only a few references to such authorities will be made.

In *Van Camp* v. *American Can Co.*, 278 U. S. 245, this court said:

> * "These facts bring the case within the terms of the statute, unless the words 'in any line of commerce' are to be given a narrower meaning than a literal reading of them conveys. The phrase is comprehensive and means that if the forbidden effect or tendency is produced in one out of all the various lines of commerce,

the words 'in any line of commerce' literally are satisfied. The contention is that the words must be confined to the particular line of commerce in which the discriminator is engaged, and that they do not include a different line of commerce in which purchasers from the dicriminator are engaged in competition with one another. In support of this contention, we are asked to consider reports of congressional committees and other familiar aids to statutory construction. But the general rule that 'the province of construction lies wholly within the domain of ambiguity,' *Hamilton* v. *Rathbone*, 175 U. S. 414, 419, 421, 20 S. Ct. 155, 158, (44 L. Ed. 219), is too firmly established by the numerous decisions of this court either to require or permit us to do so. The words being clear, they are decisive. There is nothing to construe. To search elsewhere for a meaning either beyond or short of that which they disclose is to invite the danger, in the one case, of converting what was meant to be open and precise, into a concealed trap for the unsuspecting, or, in the other, of relieving from the grasp of the statute some whom the legislature definitely meant to include. Decisions of this court, where the letter of the statute was not deemed controlling and the legislative intent was determined by a consideration of circumstances apart from the plain language used, are of rare occurrence and exceptional character, and deal with provisions which, literally applied, offend the moral sense, involve injustice, oppression or absurdity. *United States* v. *Goldenberg*, 168 U. S. 95, 103, 18 S. Ct. 3, 42 L. Ed. 394; or lead to an unreasonable result, plainly at variance with the policy of the statute as a whole. *Ozawa* v. *United States*, 260 U. S. 178, 194, 43 S. Ct. 65, 67 L. Ed. 199. Nothing of this kind is to be found in the present case."

In *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.*, 305 U. S., 315, it was said:

"This Court has had several occasions within the last few years to construe statutes in which conflicts between reasonable intention and literal meaning occurred. We have refused to nullify statutes, however

> hard or unexpected the particular effect, where unambiguous language called for a logical and sensible result. Any other course would be properly condemned as judicial legislation. However, to construe statutes so as to avoid results glaringly absurd, has long been a judicial function. Where, as here, the language is susceptible of a construction which preserves the usefulness of the section, the judicial duty rests upon this Court to give expression to the intendment of the law."

And, in *United States, et al.* v. *Missouri Pac. R. Co.*, 278 U. S. 269:

> "The language of that provision (Sec. 15, I. C. A.) is so clear and its meaning so plain that no difficulty attends its construction in this case. Adherence to its terms leads to nothing impossible or plainly unreasonable. We are, therefore, bound by the words employed and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. It is elementary that, where no ambiguity exists, there is no room for construction. Inconvenience or hardships, if any, that result from following the statute as written, must be relieved by legislation."

No Limitations Are Either Expressed or Implied.

Appellants recognize the force of the rule of construction laid down in the *Van Camp* case, *supra*, but seek to avoid it by pleading ambiguity and unintended results. An examination of the argument discloses that it is not the Act which they assert to be ambiguous; instead, they really insist that Congress did not mean what it said, and they ask the court to legislate. Appellants' argument is based largely on an erroneous conception of legislative power in constructing the frame of remedial statutes, to be supplemented in detail and executed by an administrative agency upon determination of the effectuating events. It would be of no legal significance if Congress did not even know of all the details which might become involved within the definite

frame of the grant of power or policy declared, and within the fixed and definite legislative standards established.

Skelton v. *State*, 173 Ind. 462; 89 N. E. 860, 90 N. E. 897:

> "It is asserted that the construction given to the Beardsley law in this case works a wide departure from the former policy of this state. A concession of this claim does not affect the duty of the court. The legislative department determines the public policy of the state, and when it has declared a particular policy in plain terms, the duty of the courts is to give it effect."

Daniels v. *State*, 150 Ind. 348; 50 N. E. 74:

This case is very complete in its treatment of the proposition that statutes may apply to conditions and situations unknown to the legislature:

> "Except in some few cases where a statute has fallen under the principle of excessively strict construction, the language of a statute is generally extended to new things which were not known and could not have been contemplated by the legislature when it was passed."

Texas & Pac. Ry. v. *Interstate Commerce Commission*, 162 U. S. 197:

> "The scope or purpose of the act is, as declared in its title, to regulate commerce. It would, therefore, in advance of an examination of the text of the act, be reasonable to anticipate that the legislation would cover, or have regard to, the entire field of foreign and nterstate commerce, and that its scheme of regulation would not be restricted to a partial treatment of the subject."

The Elkins and other acts prohibit rebating, preferences and discriminations, and they are not limited to practices known at the time of passage.

The Sherman, Clayton, and Federal Trade Commission Acts are as broad as man is ingenious.

United States v. *P. Koenig Coal Co.*, 270 U. S. 512:

> "We have often declared that the purpose of Congress in the Elkins law was to cut up by the roots every form of discrimination, favoritism and inequality (citing cases). It would be contrary, therefore, to the general intent of the law to restrain the effect of the language used so as not to include acts exactly described when they clearly effect discrimination and inequality."

Armour Packing Co. v. *United States*, 209 U. S. 56:

Referring to the Elkins Act, it was said:

> "It is not so much the particular form by which, or the motive for which, this purpose was accomplished, but the intention was to prohibit any and all means that might be resorted to to obtain or receive concessions and rebates. * * * It is the province of the judiciary to enforce laws constitutionally enacted, not to make them to suit their own views of propriety or justice."

New York, N. H. & H. R. Co. v. *I. C. C.*, 200 U. S. 361, 391:

> "The all-embracing prohibition against either directly or indirectly charging less than the published rates shows that the purpose of the statute was to make the prohibition applicable to every method of dealing by a carrier by which the forbidden result could be brought about. * * *"

The Commission has held that certain statutes cover the trucking industry, although the trucking industry was not in existence when the statutes were passed. The Clayton Anti-Trust Act was passed in 1914 and Sec. 10 makes it unlawful for a common carrier to make purchases in excess of $50,000 per year from any concern in which there are joint officers. There is nothing in the legislative history of the Clayton Anti-Trust Act to show that Congress

even thought of motor carriers. The Commission administers Sec. 10 of that Act, and issued an order in 1938 making the rules and regulations governing competitive bidding applicable to motor carriers. That was done 24 years after the Act was passed. The bare statute was followed in that case without the aid of legislative history.

No Harsh, Oppressive or Absurd Results are Possible.

The record contains no facts leading to any harsh, absurd or oppressive results. The power granted to the Commission is exactly co-extensive with the finding of need to effectuate the purposes which Congress outlined and having due regard to the purposes outlined by Congress, the limitations directed to those ends, the findings and reports required, and the limitations of reasonableness, it is impossible for the Commission to go beyond the subject matter or to deal with it more extensively than Congress intended.

If the result flowing from literal construction be directly related to the subject matter, there can be no unintended effect in the judicial sense, and if such exists in the legislative sense, it is for the legislature to correct.

Appellants cannot ignore the statute purposes, limitations and findings prescribed, and conjure up conditions and speculate as to oppressive, absurd or harsh results to flow from literal construction, *United States, et al.* v. *Missouri Pacific R. Co.*, 278 U. S. 269; and it is well established that in order to make such a plea the party so doing must bring himself within the facts and class affected, and no such person is an appellant in this case.

Even if it be conceived that Congress overstated the statutory purposes and understated the statutory limitations, there is nothing in the Act or in the legislative history of the Act upon which a dividing line might be drawn. Only an investigation by the Commission can possibly determine what employees have duties relating to safety, or

what working conditions affect unfair competitive practices, or the relation of qualifications and hours of service to the service to be rendered to the public. The facts of the present may have no relation to the facts of the future. The exemption from the terms and penalties of the Fair Labor Standards Act is related to the power of the Commission to be exercised under either present or future needs.

The Motor Carrier Act is limited to transportation, and if there are any phases of transportation which Congress does not wish to deal with, Congress alone can make that determination. It would be pure speculation for the courts to attempt to do so.

In Ex Parte MC-28, the Commission gave as one of its reasons for concluding that Congress did not intend to vest it with jurisdiction over all classes of employees, that it would be a difficult task to prescribe qualifications and maximum hours of service for all classes of employees. The Commission offered a similar reason in another case involving its failure to perform its statutory duty. The case of *U. S. ex rel. Kansas City Southern Ry. Co.* v. *Interstate Commerce Commission*, 252 U. S. 178, was a mandamus proceeding to compel the Commission to perform its duty, and the court said:

> "It is true that the Commission held that its non-action was caused by the fact that the command of the statute involved a consideration by it of matters 'beyond the possibility of rational determination,' and called for 'inadmissible assumptions,' and the indulging in 'impossible hypotheses' as to subjects 'incapable of rational ascertainment', and that such conclusions were the necessary consequence of the Minnesota Rate Cases, 230 U. S. 352, 33 S. Ct. 729, 57 L. Ed. 1511, 48 L. R. A. N. S.) 1151, Ann. Cas. 1916A. 18.
>
> "We are of opinion, however, that, considering the face of the statute and the reasoning of the Commission, it results that the conclusion of the Commission was erroneous, an error which was exclusively caused

by a mistaken conception by the Commission of its relation to the subject, resulting in an unconscious disregard on its part of the power of Congress and an unwitting assumption by the Commission of authority which it did not possess. And the significance which the Commission attributed to the ruling in the Minnesota Rate Cases, even upon the assumption that its view of the ruling in those cases was not a mistaken one, but illustrates in a different form the disregard of the power of Congress which we have just pointed out, since, as Congress indisputably had the authority to impose upon the Commission the duty in question, it is impossible to conceive how the Minnesota Rate ruling could furnish ground for refusing to carry out the commands of Congress, the cogency of which consideration is none the less manifest, though it be borne in mind that the Minnesota Rate Cases were decided after the passage of the act in question.

"Finally, even if it be further conceded that the subject-matter of the valuations in question which the act of Congress expressly directed to be made necessarily opened a wide range of proof and called for the exercise of close scrutiny and of scrupulous analysis in its consideration and application, such assumption, we are of opinion, affords no basis for refusing to enforce the act of Congress, or what is equivalent thereto, of exerting the general power which the act of Congress gave, and at the same time disregarding the essential conditions imposed by Congress upon its exercise."

No Case Supports Appellants Argument.

Appellants cite certain cases in support of their contention that this court should first find that Congress did not mean what it said, and if that be done, then there are precedents for limiting the law by judicial construction.

None of the cases cited limit any statutes of Congress conferring jurisdiction on the Commission, and none of them limit the power of any administrative agency to first make factual findings of need within the scope of the plain language of the statute and then to regulate accordingly.

There is a real difference between the dead words of a complete and self operating statute, and statutes which must be implemented and given life from facts ascertained by an administrative body and orders issued pursuant thereto. The cases cited by appellants deal largely with dead words in self-operating statutes.

Courts occasionally prevent dead words from becoming instruments of oppression in fields remote from the subject dealt with by the statute. Where a statute is merely permissive and an administrative body must first find the requisite facts to implement a statute, it can never result in absurdity, oppression, or exceed the intent. Any action by an administrative body which would produce absurd results would fall as arbitrary and capricious action on the part of the administrative body but would not necessitate annulment of any powers conferred by the law.

United States, et al. v. *Frank O. Lowden, et al.*, No. 343, October Term, 1939, before this court, seems to be particularly in point because it involves labor conditions prescribed by the Commission and upheld by this Court. The only statutory guide was the public interest, and the only transportation factor was the welfare of the employees.

The case arose under Section 5(4)(b) of Part I of the Interstate Commerce Act, dealing with the matter of consolidations of railroads. The Commission was authorized to attach terms and conditions to its approval which would promote the public interest. The pertinent provisions of Section 5(4)(b) are as follows:

> "* * * If after such hearing the Commission finds that, subject to such terms and conditions *and such modifications as it shall find just and reasonable*, the proposed consolidation, * * * will be in harmony with and in furtherance of the plan for the consolidation of railway properties established pursuant to paragraph (3), and will promote the public interest, it may enter an order approving and authorizing such consolidation, * * * *upon the terms and conditions and with the modifications so found to be just and reasonable.*" (Emphasis supplied)

The Commission attached numerous labor conditions to prevent the employees from losing their places. The conditions prescribed may be briefly summarized as follows:

> For five years after lease begins no employee shall be placed in a lower position as a result of such lease, unless
>
> Any employee dismissed, through elimination of his job or by exercise of seniority rights of another employee whose position is abolished, shall be paid a monthly allowance while deprived of employment equal to 60 per cent of his average monthly compensation during the last 12 months of employment.
>
> Any employee who suffers loss in the sale of his home, or by securing cancellation of unexpired lease, shall be protected for one year.
>
> If any employee is required to move within one year, the company is to pay his expenses.

The Commission spelled out its authority to impose these conditions with respect to labor from the general terms of the statute and particularly the provision that the consolidations approved "will promote the public interest".

The report of the Commission argues at length the relationship between the welfare of employees and the public interest and cites numerous cases in support of the position taken. The Commission apparently didn't then feel that its construction in that case led to absurd results or lacked legislative standards.

A comparison of the very general terms of Section 5(4)(b) of Part I with the precise provisions of Section 204(a)(1) and (2) of Part II, immediately discloses that under Part I they did not concern themselves with legislative history, legislative standards or even a clear statutory provision.

The Commission's report is found at 230 I. C. C. 181, wherein the Commission said:

> "The language of section 5(4)(b) is broad, and, as we view it, the only limitation is that any conditions we impose must be in the public interest. Manifestly it

would be impossible, because of the many changing situations which arise in proceedings under section 5(4), for Congress to undertake to grant specific jurisdiction to impose a particular condition or conditions in the public interest. We concur in the finding of division 4 in *St. Paul Bridge & Term. Ry. Co. Control*, 199 I. C. C. 588, that the welfare of the employees affected is one of the matters of public interest which we must consider in proceedings under section 5(4), and, therefore, are of the opinion that the conditions imposed in the proceeding herein involved are proper and relate to a subject matter within our jurisdiction. We are not attempting to exercise jurisdiction to regulate employment, nor the compensation of employees, nor their expenses. We are simply attempting in the public interest reasonably to protect those employees of the applicants who may be adversely affected economically by the grant of authority herein against unavoidable but unreasonable and unjust burdens which are not in the public interest. Accordingly, the finding of division 4 in that regard should be, and it is, affirmed."

In approving the Commission's order, the court first dealt with the question of "public interest", a term which will be found in Section 202(a) of the Motor Carrier Act. This court stated the issue as follows:

"Accepting the premise, as we may for present purposes, without considering the contention of the Commission that the conditions if just and reasonable, need not be related to other statutory standards, the issue is narrowed to a single question whether we can say, as a matter of law, that the granting or withholding of the protection afforded to the employees by the prescribed conditions can have no influence or effect upon the maintenance of an adequate and efficient transportation system which the statute recognizes as a matter of public concern. * * *

"Even if we were doubtful whether the particular provisions made here for the protection of employees could have the effect which we have indicated upon railroad consolidation and upon the adequacy and efficiency of the railroad transportation system, we could

not say that the congressional judgment that those conditions have a relation to the public interest, as defined by the statute is without rational basis (citing cases). If we are right in our conclusion that the statute is a permissible regulation of interstate commerce, the exercise of that power to foster, protect and control the commerce with proper regard for the welfare of those who are immediately concerned in it, as well as the public at large, is undoubted."

The cases cited by appellants in support of narrowing the Commission's jurisdiction by construction are not in point. Insofar as appellees have been able to discover, this Court has never by construction of general terms narrowed the meaning of those terms to deprive an administrative agency of power where the exercise of the power depended upon findings of fact to support reasonable regulations of any subject within the policy and purpose of the statute.

United States v. *Rock Royal Co-Op*, 307 U. S. 533:

"From the earliest days the Congress has been compelled to leave to the administrative officers of the Government authority to determine facts which were to put legislation into effect and the details of regulations which would implement the more general enactments. It is well settled, therefore, that it is no argument against the constitutionality of an act to say that it delegates broad powers to executives to determine the details of any legislative scheme. This necessary authority has never been denied. Panama Refining Co. v. Ryan, 293 U. S. 388; Schechter Corp. v. U. S., 295 U. S. 495; Currin v. Wallace, 306 U. S. 1. In dealing with legislation involving questions of economic adjustment, each enactment must be considered to determine whether it states the purpose which the Congress seeks to accomplish and the standards by which that purpose is to be worked out with sufficient exactness to enable those affected to understand these limits. Within these tests the Congress needs specify only so far as is reasonably practicable."

Louisville & N. R. Co. v. *United States*, 282 U. S. 740:

> "Whatever doubt or uncertainty attached to the application of the provisions of the act to the transactions under review lay in the appreciation of the facts, and appropriate action thereon, and not in the interpretation of the terms of the law after the facts have been ascertained. * * *
>
> "Long-continued practice and the approval of administrative authorities may be persuasive in the interpretation of *doubtful* provisions of a statute, but cannot alter provisions that are clear and explicit when related to the facts disclosed. A failure to enforce the law does not change it. The good faith of the carriers in the transactions of the past may be unquestioned, but that does not justify the continuance of the practice."

No Administrative Precedents Are Involved.

There is no exception to the general rule of construction in cases where administrative bodies recommended, prepared or testified before committees in connection with legislation which they are later called upon to administer.

In addition to the fact that the "usual aids to construction" may lead to uncertainty and traps; it has too often happened that those who assisted in preparing legislation had different purposes and limitations in mind, than the legislative body had.

Northern Pac. R. Co. v. *Sanders Co.*, 214 Pac. 596.

> "The court is not governed or bound by the language found in the report of a tax commission, recommending the enactment of a statute, and stating the commission's understanding as to the property taxable under specified classes."

In dealing with contemporary administrative interpretations by the Patent Office, this Court observed that the aids to construction may have weight "when choice is nicely balanced". *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.*, *supra*.

Administrative interpretations are not controlling.

Piedmont and Northern Ry. Co. v. *I. C. C.*, 286 U. S. 299:

"Only a word need be said with respect to the contention that governmental agencies have heretofore classified the railway as an interurban electric line. It is true that, in connection with quite diverse administrative functions, the United States Labor Board, the Postmaster General, and the Interstate Commerce Commission have classified petitioner's railway as an interurban electric line in distinction to steam railroads. Neither the administrative nor the statutory classification has, however, been uniform, and in any event is not controlling in this litigation."

Legislative Standards.

No one has suggested that full jurisdiction can offend the moral sense, involve injustice, opression or absurdity within the standards prescribed.

Congress specified the type of economic regulation which it thought would be helpful to the motor carrier industry and would be in the public interest. It said in Section 204 of the Motor Carrier Act, that it shall be the duty of the Commission to establish reasonable requirements with respect to qualifications and maximum hours of service, to the end that the provisions of Part II, the whole Motor Carrier Act, should be effectuated. It outlined in Section 202 the type of economic regulation which it had in mind. To say that Congress did not make clear its intentions, is to overlook the specific directions in Section 204 as well as the declaration of policy in Section 202.

The suggestion of a lack of legislative standards of qualifications and hours of service, for other than safety, is founded on a premise that necessarily negatives a legislative standard, even for safety.

There is nothing unconstitutional about a broad scope with proper standards, but there may be an unconstitutional delegation of power within a narrow scope without any standards. To divorce the authority, to prescribe qual-

ifications and maximum hours, from the statutory mandate that such regulations shall be to the end of effectuating all of the purposes of the Motor Carrier Act, is to divorce the authority from all standards.

The statute provides that the regulations must be reasonable. The only conceivable test of reasonableness is whether the regulations effectuate all of the provisions of the Motor Carrier Act, and not merely the safety provision. A regulation designed solely from the standpoint of maximum safety could destroy the service and inherent advantages of the industry.

The power granted to the Commission is exactly co-extensive with the finding of need to effectuate the purposes which Congress outlined, and having due regard for the purposes outlined by Congress; the limitations directed to those ends; the findings and reports required; and the limitations of reasonableness; it is impossible, within these legislative standards, for the Commission to go beyond the subject or the intent of Congress by wandering into the realms of sociological and national employment considerations.

To limit the grant of regulatory power to such particular illustrations as may be found in the debates or Committee hearings, or as were even known at the time, would, on its face, destroy the only real purpose for the existence of administrative agencies having quasi-legislative functions.

For-Hire vs. Private Carrier Regulations.

Certain phraseology in Sec. 204(a)(1), (2) and (3) of the Motor Carrier Act and in Section 13(b) of the subsequent Fair Labor Standards Act, seems to have given rise to the attempt of the Administrator of the Wage and Hour Division, Labor Department, to assert some jurisdiction over hours of service of employees of common and contract carriers.

When Congress exempted the railroad employees from the hour provisions of the Fair Labor Standards Act, it used, in Section 13(b), the following phraseology:

> "The provisions of Section 7 shall not apply with respect to * * * (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act."

The application of Part I of the Interstate Commerce Act to the employer was made the test of the exemption of the employee.

In the same section, Congress exempted employees of common, contract and private carriers by motor vehicle, and used this phraseology:

> "The provisions of Section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935; * * *."

Here, the exemption was predicated upon the jurisdiction of the Commission over all of the employees of common and contract carriers subject to paragraphs (1) and (2), and some of the employees of private carriers subject to paragraph (3).

An examination of the Motor Carrier Act discloses that the Commission does not have general jurisdiction over private carriers, and it is also perfectly clear that as to private carriers, the Commission's jurisdiction under Sec. 204(a)(3) is definitely limited to the purpose of promoting safety. But the limitations as to private carriers, under paragraph (3), have no bearing whatever on the Commission's jurisdiction over for-hire carriers under paragraphs (1) and (2). The scope and purposes of different language and different ends sought becomes clear upon consideration of the differences in classes of carriers.

The for-hire carrier is regulated for purposes of adequate public service, the prevention of unfair competition, and safety. As to the private carrier, Congress was concerned with safety alone—there is no question of public service involved—and the competitive practices of private carriers in no way affect the adequacy of the *public* transportation service or the policy of Congress.

Part I of the Interstate Commerce Act, referred to in the Fair Labor Standards Act, does not apply to private carriers by railroad, and railroads do not engage in private business on account of the prohibitions found in the "commodities clause," Section 1(8) of Part I of the Interstate Commerce Act. The exemption, in the Fair Labor Standards Act, of railroads subject to Part I of the Interstate Commerce Act, has *only the effect of exempting employers engaged in common carrier service.* The same basis for exemption could not be applied to all motor carriers subject to the Motor Carrier Act because that would have exempted all of the *non-transportation employees of the private carriers.* All private carriers by motor vehicle are engaged in some other line of business. To have used an unqualified reference to Part II of the Interstate Commerce Act (Motor Carrier Act) in creating the motor carrier exemption, similar to that used in creating the railroad exemption, would have exempted a very large number of private carrier employees having nothing to do with transportation and not subject to regulation by the Interstate Commerce Commission.

The distinction in language between paragraphs (1) and (2), and paragraph (3) of Section 204(a) of the Motor Carrier Act discloses the care with which Congress pointed out the for-hire carrier matters to be regulated and the care taken to exclude the private carrier matters which it did not wish to touch.

Appellants disregard the significant difference in the language which Congress used in paragraphs (1) and (2) of Sec. 204 covering common and contract carriers as com-

pared with the language used in paragraph (3) of said section covering private carriers. That difference can not be ignored. The District Court correctly found the real reason for the difference and gave it effect.

In the case of *Petition of Public National Bank of N. Y.*, 278 U. S. 101, the court said:

> "No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that significance and effect shall, if possible, be accorded every word. As early as in Bacon's Abridgement, Par. 2, it was said that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant."

No question of long and consistent construction by the administrative agency is involved in this case. This is the first time that the Commission has denied its jurisdiction over this subject matter, and appellees promptly challenged the ruling.

Section 204 of the Motor Carrier Act and Sec. 13(b) of the Fair Labor Standards Act, considered in the light of the distinction between for-hire and private carriers, shows the care taken to give the Commission jurisdiction over *all employees* of all common and contract carriers, but only limited jurisdiction over such private carrier employees whose duties are related to safety.

Congress, accordingly and consistently, limited the exemption from the hour provisions of the Fair Labor Standards Act to such private carrier employees as are subject to the jurisdiction of the Commission.

The District Court carefully considered and correctly understood the purposes of Congress in making the distinction between for-hire and private carriers.

Both railroad and motor carrier emyployees are subject to the minimum wage provisions of the Fair Labor Standards Act and the exemptions run only to the hour provisions.

In mentioning motor carrier employees in the exemptions under Sec. 13(b) of the Fair Labor Standards Act, Congress merely confirmed an exemption already established by Sec. 204(b) of the Motor Carrier Act. The Fair Labor Standards Act was in substitution for the National Industrial Recovery Act.

By an assumed and unwarranted process of statutory construction, the Commission has read out of paragraphs (1) and (2) of Section 204(a) the general jurisdiction conferred, and read into paragraphs (1) and (2) the jurisdictional limitations which were set forth only in paragraph (3), thereby nullifying the legislative intent as disclosed by the context and legislative history of the statute.

The Declaration of Policy and Delegation of Jurisdiction, Sec. 202(a), referred to by the District Court, is probably the most inclusive policy ever laid down by Congress in any Act. It specifically covers destructive competitive practices and economical and efficient service in connection with common and contract carriers.

When the Motor Carrier Act was passed by the Senate, April 16, 1935, the National Industrial Recovery Act was still in effect, and the Codes under that Act covered all employees of common and contract carriers by motor vehicle, but did not cover private carriers. The Motor Carrier Act, by Sec. 204(b), superseded the National Industrial Recovery Act and all acts amendatory thereof or in substitution therefor.

The Fair Labor Standards Act made the "power" of the Commission the test of the exemption, irrespective of the exercise of the power. The exercise of the power is wholly an administrative function of the Commission, brought into play upon a finding of need, and to the extent so found.

It is significant that the exemption in Sec. 13(b) of the Fair Labor Standards Act runs to all of the power in Sec. 204 of the Motor Carrier Act, and is not limited to sub-sections or paragraphs. Sub-section 204(c) gives the Commission the power to classify common and contract carriers

and to regulate by classes, but did not touch private carriers.

This provision obviously recognizes the need for flexible administrative regulations for common and contract carriers, as distinguished from the rigidity of the Fair Labor Standards Act.

Point 2.

The legislative history of the Motor Carrier Act and related acts discloses a clear Congressional intention that the Commission shall regulate hours of service and qualifications for all purposes within the declaration of policy and legislative standards set forth in Sec. 204, and that the Commision's jurisdiction shall be exclusive.

Prior to the enactment of the Motor Carrier Act, hours of service and unfair competitive practices of common and contract carriers were dealt with in full under the National Industrial Recovery Act and Code No. 278 for the trucking industry. The Code fixed maximum hours for all classes of employees of motor carriers and specifically included clerical or office workers, rate clerks, dispatchers, helpers, watchmen, and drivers. The Code exempted fom the maximum hour provisions only those employees engaged in managerial or executive capacity, solicitors, and station managers, receiving more than $35 per week in the north and $30 per week in the south. The Motor Carrier Act superseded the Code, and that fact was made plain by many references in committee hearings and in congressional debates on S. 1629, which became the Motor Carrier Act, and no purpose can be served by quoting at length Congressional debates on the point.[1]

Sec. 204(b) of the Motor Carrier Act, dealing with supersedure of codes, is plain and provides for supersedure of

[1] Congressional Record of July 31, 1935, page 12,679, Congressman Harlan said: "* * * It (referring to S. 1629, Motor Carrier Act) includes the provisions of the trucksters' code which are now wiped out, maintaining labor hours and minimum rates. * * *"

both present or future acts, "In conflict or inconsistent with any action under the provisions of this part."

Insofar as motor carriers and other common carriers are concerned, the Fair Labor Standards Act deals exclusively with minimum wages and child labor, and the Interstate Commerce Act gives the Commission exclusive jurisdiction over maximum hours, which involves service and competition over which the Commission has jurisdiction.

The Fair Labor Standards Act regulates minimum wages under Sec. 6, but cannot impose penalty wages under Sec. 7, to force extra employees on carriers subject to regulation by the Commission.

Both Unfair Competition and Safety Were Considered by Congress.

Appellants quote the testimony of Commissioner McManamy.[2] He had charge of the Bureau of Safety for the Commission, (Minutes of the Commission, October 22, 1934) and, naturally, his thought ran to safety. No doubt, he would have been equally interested in service and unfair competition had those matters been under his jurisdiction. His quoted statements show that he merely asked that the hours of service provisions contained in a prior bill, S. 294, be included in the pending bill, S. 1629. He also testified at other hearings[2] and it appears from his testimony on

[2] Hearings before the Committee on Interstate and Foreign Commerce, House of Representatives, 73rd Congress, H. R. 6836 (1934):

Page 16: Commissioner McManamy called the committee's attention to the Commission's report in Docket 18,300, *Motor Bus - Truck Operation*, 140 I. C. C. 685, wherein the Commission said: "For the present, no requirements should be made regarding the qualifications of drivers, hours of service of employees, and the size, length, weight of load, and speed of motor vehicles operating for-hire on the public highways in interstate commerce."

Page 17: "Commissioner McManamy: The Commission at that time did not include in its recommendations the establishment of

the prior bill that so long as the Commission did not seek authority to prescribe rates, it did not seek authority to prescribe hours of service. A fair reading of this testimony would appear to indicate that when the Commission came to the conclusion that it should have jurisdiction over rates, it, for that reason, decided it should have jurisdiction over hours of service.

Representatives of the American Federation of Labor testified with respect to the need for regulation of hours to prevent destructive competitive practices.[1]

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rates for transportation of property by motor truck operating over the public highway, nor any recommendations covering the safety of operation. In view of the development of the industry and in the light of further experience, the Commission now believes that such provisions should be included. * * *

"Congressman Cooper: I believe you stated a moment ago that the Commission did not think it advisable for the federal government to regulate the hours of service at the present time. Am I right there?

"Commissioner McManamy: I think you are not right, Mr. Cooper. At the time this recommendation was made in 1932, the Commission stated that, but the Commission's position at the present time is as follows: The Commission at that time, that is the time of its former report, did not include in its recommendations the establishment of rates for the transportation of property by motor trucks operating over the public highway, nor any recommendations covering the safety of operations. In view of the development of the industry and in the light of former experience, the Commission now believes that such provisions should be included. It is probably somewhat confusing on account of my way of presenting it.

"Congressman Cooper: But that takes in hours of service too?

"Commissioner McManamy: Yes, sir."

[1] Hearings on S. 1629, to amend the Interstate Commerce Act, February 25, to March 6, 1935, before Senate Comm. on Interstate & Foreign Commerce, 74th Congress, 1st Sess. Part 1—Excerpts from statement by Thomas P. O'Brien, Gen. Organizer, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, affiliated with the A. F. of L.

Page 118: "Labor cost is the most significant competitive variable cost. It represents about 40 to 50 percent of the total cost of

Footnote 3—Continued.

operation. Rate regulation without some underlying degree of stabilization of labor conditions is bound to be difficult of enforcement and would be unguided. It may be even conducive to the undermining of fair labor conditions by seeking to establish rates on the basis of unreasonably low labor costs with respect to wages, hours, or conditions of employment. This possibility was not a reality in the railroad industry because of the long history of unionization and widely stabilized labor conditions founded basically on the union agreements and the several federal and state laws regulating hours of service and other terms of employment, as well as the railroad labor act. In the trucking industry, special attention must be paid to this labor aspect of the problem of stabilization because of its loosely knit character, its widely diversified business organization, the preponderance of 1-man operators, the absence of labor organization in some regions, and the unreasonable practices of many operators. It is labor's position that stabilization of labor conditions must precede or at least accompany the movement toward rate and business regulation which is the underlying purpose of the present bill."

Page 119: "(d) Fair competition within the industry requires that uniform schedules of hours be prescribed for the industry."

Page 124: "In the second place, we believe that stability in the rate structure in the industry can only be assured by means of the establishment of a minimum wage, maximum hours, and conditions of employment. Without such labor conditions known to the regulatory bodies, directing the rate structure, they will proceed unguided as to the basic costs. Fair competition can only be assured if the essential cost of labor is uniform or approximately uniform. Enforcement of a rate structure will follow. The N.R.A. code has developed considerable stability within the industry by means of its labor provisions. Rates to the public are essentially a subject for public regulation and consequently a technique must be developed outside the limits of N.R.A."

Hearings before Committee on Interstate & Foreign Commerce, House of Representatives, 73rd Congress, H.R. 6836:

Page 346: Witness Corbett: "(a) Motor Transportation should be given the same regulation to prevent unsound and discriminatory rates, to control service, to prevent abuses in the capital structure, to insure correct and uniform accounting, and to govern the handling of labor problems, as has been found

Commissioner Joseph B. Eastman, who was also Coordinator of Transportation at that time, testified and was concerned with unfair competition.[6]

While some (witness Shertz, Feb. 26, 1935, p. 189, Hearings on H. R. 5262) urged Congress to regulate the industry partially by industry codes and partially through the Commission, others (witness Scheumemann, Jan. 24, 1934, P. 170, Hearings on H. R. 6836) opposed divided jurisdic-

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necessary in the railroad industry. * * * (c) Statutory limitations should be placed upon the maximum hours of service of employees in motor bus or truck service."

[5] Hearings before Sub-committee of Committee on Interstate & Foreign Commerce, House of Representatives, 74th Congress, H.R. 5262, H.R. 6016.

Page 247: Witness Harrison: "Now Mr. Shertz testified yesterday that there had been a large number of violations of the labor provisions of the Code. I think it will do no good whatever to regulate the highway carriers, or any other carriers, unless you give the employees an opportunity to make them pay decent wages and give them a reasonable standard of working conditions. Because whatever may be placed upon the employers in the way of regulations, they will overcome by taking it out of the hides of the men who work for them."

[6] Page 83, Part I of the Committee hearings on S. 1629:

"In referring to that matter, in a report published as House Document No. 89, I had this to say:

"There are, however, certain desirable things not inconsistent with Commission regulation which can often be better accomplished by a code of fair competition than in any other way, and the opportunity to accomplish such results through a code should clearly be open. For example, where employees are not well organized a code is an excellent means of *preventing exploitation of labor through the enforcement of minimum wages and maximum hours of service.* There are *doubtless certain unfair trade practices which can be well controlled in this way.* The organization of the industry brought about and fostered by a code can be of great help to Commission regulation. There is no reason why the industry in its code should not undertake self-regulation of rates so long as regulation of the rate by the Commission is not precluded where necessary."

tion, but Congress chose to give full jurisdiction to the Commission.

If legislative history is to be resorted to, to aid the plain language of this statute, then we submit that there is much legislative history indicating that a broader purpose than mere safety was intended for regulation of hours of service. The testimony of the Coordinator of Transportation and the representative of the American Federation of Labor dispel any contention that there is anything absurd about the need for regulation of hours of service to prevent destructive competitive practices.

Subsequent Legislation.

If there can possibly be any doubt with respect to the meaning of the plain language of Sec. 204 and it is desirable or appropriate to refer to legislative history for the purpose of ascertaining the will of Congress, there is little need to deal with historical fragments of thirty bills (12 Senate and 18 House) and their legislative history, extending from 1925 to 1935, and eventually leading to the enactment of the Motor Carrier Act, and speculating as to their significance. Congress has more recently considered the matter in full on two occasions. After the passage of the Motor Carrier Act, Congress re-examined the question in connection with the enactment of the Fair Labor Standards Act (29 U. S. C. A. 201, et seq.) which was passed in June, 1938.

The Seventy-fifth Congress conducted joint hearings before the Committee on Education and Labor, U. S. Senate, and the Committe on Labor, House of Representatives, on S. 2475, which bill eventually became the Fair Labor Standards Act. Among the problems considered was, to what extent, if any, should transportation agencies be dealt with in view of the national policy with respect to such agencies.

During the course of the hearings, numerous representatives of transportation labor and transportation employers

appeared and presented arguments for exemptions. The joint committee was advised that the nature of the transportation business did not lend itself to straight-jacket regulation, nor to conflicting state regulations.

The American Trucking Association (Appellee here) appeared before the Joint Committee and opposed divided jurisdiction.[7]

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[7] Joint Hearings on S. 2475, (Page 743. Excerpts from statement of J. Ninian Beall, General Counsel, American Trucking Association, Inc.:

"The Chairman: You represent the American Truckers Association?

"Mr. Beall: Mr. Chairman, my name is J. Ninian Beall. I am counsel for the American Trucking Associations, Inc.

• • •

"We are primarily concerned about conflicting jurisdiction over the same subject matter, and my appearance is limited to respectfully requesting the committee to give due consideration to these matters.

Certain conflicts already exist between Federal and State jurisdiction, and that condition will be further complicated by this bill as drawn.

"The interstate operations of the trucking industry, including rates, *hours, qualifications, and ages* of employees were placed under Federal regulation by the Motor Carrier Act, 1935.

"We ask this committee to consider first whether there is need for further regulation of this type; and if further regulation be deemed necessary to consider the necessity for some form of coordination of control over rates and income and operating expenses, including wages and hours, in the case of both intrastate and interstate trucking operations.

"This appears to us to be necessary from the standpoint of both labor and employer.

"The Motor Carrier Act, section 204, gives the Interstate Commerce Commission jurisdiction over *hours of service and qualifications* of employees.

• • •

"The outstanding development of 100 years of 'commerce clause' litigation and 50 years of Federal regulation of interstate transportation, has been the recognition of the necessity

Following this presentation, the Committee re-drafted the bill and put in the exemption which is now found in Sec. 13(b) of the Fair Labor Standards Act.

Insofar as hours of service are concerned, it would seem to be clear that the Committee regarded the previous act of Congress, known as the Motor Carrier Act, as giving the Commission jurisdiction over hours of service of all classes of employees of common and contract carriers and that the exemption from the Fair Labor Standards Act was a *complete* exemption *consistent with and equivalent to* the exemption granted other transportation agencies, such as railroads, air lines, etc.

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for uniform standards for and control of, such transportation, and the removal of conflicting jurisdictions.

* * *

"Section 22(a) of the Black-Connery wage-hour bill specifically provides that all Federal, State, and municipal regulation *shall not be superseded* if lower than regulations promulgated under this bill.

"If the resulting conflicts are imposed on the trucking industry, it will make *interstate transportation practically impossible*.

"In the trucking industry the ratio of wages to gross income is at present about 40 per cent for companies having gross income of $25,000 or more, and this is very high in relation to most of the large industries.

* * *

"To keep a public-service industry going, there *must be some plan for coordination between the power that regulates the cost of labor and the power that fixes rates*, because the margin between gross and net income is very small. A 40 per cent increase in wages in the pig iron industry would result in an increase of only 2 per cent in the total cost of producing pig iron, but a 40 per cent increase in the trucking industry would result in an increase of 16 per cent in operating cost.

"There is no margin available to absorb large increases in cost. Our best information is that the margin between gross

Congress now has before it general transportation legislation. A bill designated as S. 2009, the Wheeler-Lea bill, which was referred to by this court in *United States* v. *Lowden*, U. S. , 60 S. Ct. 248, That bill has been passed by both the Senate and House and while there is difference as to form, they have left undisturbed that full and exclusive jurisdiction over hours of service, which the Commission now has under Sec. 204 of the Motor Carrier Act. The Senate bill, S. 2009, as introduced on March 30, 1939, proposed to re-write the existing law and to limit the Commission's jurisdiction over hours of service, to safety. It was proposed to consolidate the provisions of Paragraphs (1), (2) and (3) of Sec. 204(a).[8] Appellees

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and net is not more than 5 per cent, and we have no control over the margin.

"If wages are to be regulated and hours further regulated, there should be some arrangement for coordination between regulating bodies so that a reasonable margin may be maintained.

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"There has never been any unemployment in the trucking industry, but on the contrary, that industry has absorbed much of the unemployment from other industries.

• • •

"This bill is not designed to meet the requirements of the transportation industry and of the public for transportation services.

"If it be deemed desirable to apply this bill to the trucking industry, we ask that the Interstate Commerce Commission be given an appropriate degree of coordinating control, in order that wages, hours, qualifications, ages, and rates may receive consideration by one responsible body.

[8] "Sec. 34(1). The Commission, in order to promote safety of operation, may establish reasonable requirements with respect to qualifications and maximum hours of service of employees and safety of operation and equipment of common carriers and contract carriers by motor vehicle, and may establish such requirements for private carriers of property by motor vehicle if need therefor is found. • • •"

appeared before the Senate Committee and objected to the proposed change in the law.[9]

After the appearance of Mr. Lawrence, the Senate Committee restored the original broad and unrestricted language of Section 204 of the Motor Carrier Act, and the bill as passed by both Senate and House leaves the Commission's jurisdiction as it was in the Motor Carrier Act as originally passed in 1935.

This general transportation legislation is still in the hands of conferees appointed to adjust the differences. As there is no difference between the two bills insofar as these provisions are concerned, there is nothing for the conferees to adjust in that respect.

The subject has certainly been thoroughly and repeatedly considered by Congress. The Fair Labor Standards Act was passed in June, 1938, and the final decision of the Commission with respect to its jurisdiction under Sec. 204 was not rendered until May 9, 1939. The decision of the District Court was made December 4, 1939, and is known to Congress, and there is no indication that Congress has any intention of limiting the Commission's jurisdiction to safety.

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[9] Hearings before Committee on Interstate Commerce, U. S. Senate, on S. 2009, April 5, 1939, at page 134. Excerpts from testimony of John V. Lawrence, Gen. Mgr., American Trucking Assns., Inc.

> "As to section 34, paragraph (1), page 113, we are opposed to the limitation that establishment of reasonable requirements with respect to qualifications and maximum hours of employees be confined to promotion of safety of operation insofar as common and contract carriers are concerned. No such limitation appears in Section 204(a), paragraphs (1) and (2) of the Motor Carrier Act. In the Motor Carrier Act there is no limitation as to safety. It authorizes the Commission to prescribe qualifications of employees and maximum hours of service for all employees. By this change in the present Motor Carrier Act, an unfair situation would be presented. All employees of railroads are exempted from the hour provisions of the Fair Labor Standards Act of 1938."

It would be difficult to imagine a case in which more congressional attention has been directed to a particular section or paragraph of a law, or more opportunity given to change it. Congress has heard all of the arguments made here and didn't change the law—it must have meant exactly what it said.

Appellants question the clarity of the language in Section 204(a), (1) and (2) by pointing out that in the same paragraph reference is made to "safety of operation and equipment." But these are separate and distinct provisions from qualifications and hours of service. These entire paragraphs specifically include, by reference, every provision of the Act. Appellants' argument is foreclosed by the report of the Commission in *Ex Parte MC-28*, wherein it points out that the power over "qualifications and maximum hours of service of employees" was added alone and without reference to any other words (See R. pp. 15 and 16).

Clear Congressional Policy.

It will be noted that the jurisdiction conferred by Section 204 runs to both qualifications and hours of service, and the further power to classify carriers and to regulate by classes. (Sec. 204(c))

Congressional consistency in dealing with the subject of transportation is helpful here in two ways: First, a definite transportation policy has been clearly established; and, second, conflicting jurisdiction has been avoided through numerous acts.

A definite transportation policy is demonstrated by the fact that all important interstate transportation agencies are exempted, by Sec. 13(a), (b) of the Fair Labor Standards Act, from the inflexible hours of service provisions of that Act. When the Fair Labor Standards Act was passed to relieve the national employment situation, railroad employment had shrunk from over two million employees to

less than one million employees. Congress was aware of that fact, but did not choose to ameliorate that condition by including railroads under the hours of service, or job-making provisions of the Fair Labor Standards Act. Contrasted with the unhappy railroad employment situation, which Congress did not touch, the motor carrier industry absorbed, in about the same period of time, about three times as many employees as the railroads lost.

There did not exist an unemployment problem in the motor carrier industry for Congress to deal with under the Fair Labor Standards Act.

From "Automobile Facts and Figures," (1939), page 16, the following data is taken: Total number of trucks; (1918) 525,000; (1920) 1,006,082; (1935) 3,664,429; (1938) 4,224,031. At page 47, motor transportation is shown as accounting for 6,380,000 direct and indirect employees of which 3,544,956 are truck drivers (excluding farm trucks), and 177,905 bus drivers.

The report of Hugh S. Johnson, Administrator of the National Industrial Recovery Act, to the President of the United States, on February 10, 1934, and transmitting for the President's approval, Code of Fair Competition No. 278, for the trucking industry (common and contract carriers only), stated that the number of employees in the for-hire portion of the trucking industry, to be covered by said Code, was 1,200,000, and that the Code would increase that number by about 300,000.

It was suggested by the Commission in *Ex Parte MC-28* (R. 16) that the amendment to Sec. 204, giving the Commission jurisdiction over qualifications and maximum hours of service of employees was a *floor amendment*. The inference was noted by the District Court and commented on in its opinion. If the language of a floor amendment is clear, it is just as binding as that contained in a committee report. A committee amendment is nonetheless so, because it was offered on the floor, instead of contained in the committee report. Legislative strategy frequently dictates such procedure.

In *Ex Parte MC-28*, the Commission made a mistake which may have influenced its views with respect to the purposes of Congress. It said that no statements by witnesses could be found in the Committee hearings which advocated regulation of hours of service for business purposes. The attention of the District Court was called to that error, and the District Court referred in its opinion to the testimony of witnesses for labor.

Point 3.

The nature of Interstate transportation business makes it necessary that one administrative agency have power to regulate qualifications and maximum hours of service for all business purposes, and the Commission is the only agency charged by Congress with the duty of executing its transportation policy.

Throughout the Congressional hearings on the bills which became the Motor Carrier Act, two important points were repeatedly emphasized by the witnesses. First, the necessity for administrative power to prescribe flexible regulations,[10] and second, the necessity for avoiding con-

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[10]Hearings before Committee on Interstate Commerce, U. S. Senate, 72nd Congress, on S. 2793:

Page 633: Witness Wakelee:

"While a factory might shut down at a given time so as to limit the hours of employment to a definite number, it is perfectly obvious that a transportation system cannot comply with any such rule."[1]

Page 634: Same witness:

"The very purpose, the very scheme of regulation in this country as applied in every state and as applied by the Interstate Commerce Commission—the theory—is that instead of Congress trying to lay down rules which will govern in each particular case, can apply certain rules as will fit. I respectfully submit that this kind of regulation has no place in the basic law which this Congress, I hope, will pass. But it is the kind of a thing that should be referred to the Interstate Commerce Commission or whatever body you choose to give that power to, so that they can meet these conditions in different sections of the country as the facts warrant."

flicting jurisdiction."[11] The first was provided in Section 204(c) and the second in Section 204(b) of the Motor Carrier Act.

The Code was flexible and hours of service varied with the class of employees, the class of carriers, and could be averaged over periods varying from two weeks to three months. Contrasted with the flat weekly limitation imposed by the Fair Labor Standards Act, it becomes apparent why the Motor Carrier Act, with its flexible provisions (Sec. 204(c)), was made to supersede all acts supplemental or amendatory to the codes (Sec. 204(b)).

The elimination of unfair competition in the trucking industry was one of the main purposes of the Code under the National Industrial Recovery Act, and pursuant thereto, hours of service of all employees were regulated. The same purpose is stated in Section 202(a) of the Motor Carrier Act, and the Commission was given jurisdiction over hours of service in Sec. 204. The same purpose is stated in Sec. 2(a) of the Fair Labor Standards Act. Congress has consistently avoided conflicting jurisdiction over the same subject for the same purpose with respect to transportation.

Carriers subject to Interstate Commerce Commission regulation are exempt in many respects from the normal jurisdiction and application of the anti-trust laws; the Federal Trade Commission; the Security Exchange Commission; and Court receivership. These acts and agencies are subordinated to the jurisdiction of the Commission.

Congress knew that there was hopeless confusion in the state regulations covering hours of service and qualifications, referred to by the District Court, and that interstate transportation could not endure in the face of such em-

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[11] Hearings before Committee on Interstate & Foreign Commerce, House of Representatives, 73rd Congress, H. R. 6836:

Witness Scheunemann (pages 170 and 171) opposed dual regulation, part Code and part Commission, and urged coordination through the Commission.

barrassment, and to impute to Congress the intention of subjecting an interstate transportation agency to the provisions of Sec. 18 of the Fair Labor Standards Act would be in the teeth of the rule laid down by the court in *Keifer v. Reconstruction Finance Corp.*, 306 U. S. 381, not to "infer Congressional idiosyncrasy" nor "impute to Congress a desire for incoherence in a body of affiliated enactments and for drastic legal differentiation where policy justifies none."

The attention of the District Court was called to U. S. Bureau of Labor Statistics Bulletin No. 616, 1936 Edition, wherein, at pages 1075 to 1079, there is a summarization of the state regulations, showing that 44 states regulated hours of service for drivers of motor vehicles, and 38 states have regulations covering many other employees of various industries.

In exempting motor carriers from the Fair Labor Standards Act, it not only exempted them from the maximum hours provision of Sec. 7 of said Act, but, *most important*, it also exempted them from Section 18 of said Act, which perpetuates the confusion of conflicting state and municipal regulations.

> "Sec. 18. No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or *municipal ordinance* establishing a minimum wage higher than the minimum wage established under this Act, or a maximum workweek *lower* than the maximum workweek established under this Act. * * *" (Italics supplied)

Hours of service of employees is directly related to adequate, efficient, and economical carrier service, over which the Commission is specifically given jurisdiction in Sections 202(a), (b); 204(a) (1) and (2); 204(c); and 216(a), (b) of the Motor Carrier Act.

It would be idle to direct the Commission to so regulate the carriers that these objectives may be accomplished, and then to divide its jurisdiction with another federal

agency and with forty-eight states, no one of which would have responsibility for, or knowledge of, the transportation problems being dealt with by the Commission.

The Commission is specifically authorized in Sec. 202(a) to cooperate with "any organization of motor carriers in the administration and enforcement of this part.". Every means has been given the Commission by statute to inform its staff with respect to any matter entrusted to its jurisdiction.

The Commission is directed to coordinate transportation between motor carriers and rail and water carriers, Sec. 202(a), and is also given jurisdiction over through routes and joint rates with other carriers, Sec. 216(c), and divisions of joint rates, in Sec. 216(f). Clearly, only the Commission has jurisdiction over all carriers, and it is not even contended by appellants that the Fair Labor Standards Act applies (as to hours of service) to the other carriers with whom through routes and joint rates may be made.

The Commission is not only the oldest, but the largest administrative agency, and Congress has consistently delegated to the Commission all manner of duties.

The most that has been suggested, as opposed to the literal meaning of the statute, is that the Commission hasn't had any previous experience and that the task would be a difficult one. We think this Court disposed of that argument in *Kansas City Southern Ry. Co.* v. *I. C. C.*, 282 U. S. 178. Congress is not estopped from legislating on new subjects and delegating jurisdiction to administrative bodies because such bodies have not had prior experience or may plead incompetence. Congress has appropriated huge sums for the administration of the Motor Carrier Act, and the Commission has *cart blanc* powers with respect to the assistants it may employ. (Sec. 205(k)).

The Commission itself has answered the argument advanced by appellants with respect to its alleged lack of

experience. We quote from Senate Document No. 152, 73rd Congress, 2nd Session; Regulation of Transportation Agencies; Transmitted to Congress by the Chairman of the Interstate Commerce Commission; Page 39:

"2. *That the Commission is 'railroad-minded', and hence incapable of dealing wisely and effectively with the problems of other forms of transportation.*—To remedy this assumed disability, it is suggested that the Commission be reorganized, so that members may be appointed who have had extensive experience with the operation of water and motor carriers. This suggestion is based on a common but superficial thought that public regulation requires commissioners who have had actual experience with the operation of the companies to be regulated.

"The fact is that such experience is generally specialized. An operating officer of a railroad usually knows very little about rates, and a traffic officer very little about operation. Neither one is likely to know much of anything about accounting or finance or law. Regulation necessarily embraces a multitude of matters, and men of practical experience in all or any large part of these can with difficulty be found, and if found are usually not available. The opposing parties have full opportunity to present the results of practical experience when cases are heard. Commissioners should be chosen for their ability to grasp new questions readily and to assimilate and appraise evidence quickly, and they should have at their command first-class expert assistance in every branch of their work. They should not be expected to be expert specialists themselves; in fact, it is better that they should not be. The experts should be on tap, not on top. Practical railroad men have been members of the Commission, but while they have done good work, it does not stand out above the work of commissioners who had, when appointed, no such experience."

The Commission Has Jurisdiction Over Many Subjects.

It has had jurisdiction, either administrative, legislative or judicial, in whole or in part, over various subjects under the following acts:

Boiler Inspection Act; Transportation of Explosives; Ash Pan Act; Clayton Anti-Trust Act (Sec. 10); Railway Labor Act; Block Signal Act; Hours of Service Act; Standard Time Act; Securities Act; Bankruptcy Act; Panama Canal Act; Interstate Commerce Act, Part I (Rail, water, express and pipeline carriers—issuance and sale of securities—certificates of convenience and necessity—directors—accounting—valuations—telephone and telegraph—street railways); Interstate Commerce Act, Part II, Motor carriers, brokers and determination of commercial zones for cities.

States Cannot Regulate Interstate Commerce.

Appellants ignore the fact that the suggested jurisdiction under the Fair Labor Standards Act could only be a contingent jurisdiction. Its jurisdiction would be lost as soon as any state prescribed more restrictive standards. To state such a proposition with respect to an interstate transportation agency is sufficient to demonstrate that Congress intended no such result.

No state can prescribe economic regulation of interstate carriers, even in the absence of federal action. They cannot deal with unfair competitive practices, sound economic conditions, adequate and efficient service, coordination of transportation service, development and preservation of transportation systems, etc. See *Frost* v. *R. R. Comm. of Cal.*, 271 U. S. 583; *Buck* v. *Kuykendall*, 267 U. S. 307; *Missouri Pac. R.R.* v. *Stroud*, 267 U. S. 404.

General jurisdiction can only be exercised by the Commission. Congress never intended that hours of service and overtime pay basis be changed at every state line. Inspectors, solicitors, adjusters, repairmen, etc., could be under numerous state laws is one day's work under the theory advanced by appellants.

There is an Indissoluble Unity in the Provisions of the Motor Carrier Act.

The limited jurisdiction contended for by the Commission would be inconsistent with other provisions of the Motor Carrier Act. To prescribe hours of service for drivers only on the theory of safety, and to leave the hours of service of dispatchers and the employees in charge of the warehouses, fuel supplies, garages, shops, loading manifests and bills of lading, subject to entirely different and conflicting regulations promulgated by different regulatory bodies, either state or federal, would, on its face, be inconsistent with the provisions of Sec. 202(a) "to develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States" and "coordinate transportation by and regulation of motor carriers and *other carriers.*" It is conceded by everyone that the employees of other common carriers are not subject to conflicting regulations.

A conclusion of lack of jurisdiction over hours of service of all employees would be inconsistent with the provisions of Sec. 202(a) with respect to the prevention of "unfair or destructive competitive practices". There are repeated declarations and legislation by Congress, declaring that unfair labor practices were a burden on interstate commerce. The National Industrial Recovery Act, the National Labor Relations Act and the Fair Labor Standards Act are examples.

Failure to confine jurisdiction over all employees to one administrative agency would be inconsistent with provisions of Sec. 202(a) providing for the development and preservation of a highway transportation system; in that it would leave such employees subject to the conflicting jurisdiction of each of the many states and municipalities in which the carriers operate.

Also, failure to confine jurisdiction to one administrative agency would be inconsistent with the provisions of Sec. 202(b) covering "the procurement of and the *provision of facilities for* such transportation," for the reason that

hours of service have a direct relation to these matters which will be affected by conflicting state laws.

In the motor carrier industry, labor represents approximately 50 per cent of all expenses and charges, and the regulation of hours of service has a direct bearing on the costs of operations. It is inconceivable that Congress should give the Commission jurisdiction over rates and income of the carriers (Secs. 216, 217 and 218); over operating certificates and permits (Secs. 206 to 210); over services and transportation (Sec. 203(a)(19)); over the provision of facilities for transportation (Sec. 202(b)); and provide requirements for continuous and adequate service (Sec. 204(a)(1)); and expect the Commission to develop a highway transportation system properly adapted to the needs of the commerce of the United States (Sec. 202(a)), and, at the same time, leave the vital subject of hours of service and, incidentally, cost of service, subject to conflicting state and federal laws and regulatory bodies.

The foregoing references are to matters within the four corners of the Motor Carrier Act and show the need for general jurisdiction in the Commission over the subject of qualifications and maximum hours of service of all employees.

As herein shown by reference to Committee hearings and Commission reports, wages represent about 50 per cent of the operating expense in the trucking industry.

The record in the *Hours of Service Case, Ex Parte MC-2*, developed the seasonal and sporadic nature of much of the business.

Evidence before the Commission in *Ex Parte 123*; *Ex Parte MC-24*; *MC-21* and other cases, shows the industry has an operating ratio of 98 or 99 per cent. There is no margin to absorb additional costs unless rate increases, which the Commission alone can approve, be made.

The industry is competitive with the railroads. The railroads have been exempt from the penalty overtime provisions of the Fair Labor Standards Act.

In the case at bar, the legislative history is not lacking in material showing the broad transportation field which was presented to and considered by Congress.

Nowhere, either in Congress or in this case, is it denied that there is need for Interstate Commerce Commission regulations covering the subject matter. It cannot be denied in the face of the facts alleged in appellees' petition. It is not contended that the Commission is not informed with respect to the economics of transportation, including labor service and costs. It has been found by the Commission that flexible regulations are necessary, and those cases were cited by the District Court.

Necessity for Flexible Regulations.

In prescribing hours of service for the purpose of promoting safety of operations, the Commission has heretofore recognized that under the Motor Carrier Act such regulations were not to be based on safety criteria alone, but that it must take into consideration the economics of the industry and the needs of the public for adequate transportation service.

In its decision in *Ex Parte MC-2, "In the Matter of Maximum Hours of Service of Motor Carrier Employees,"* 3 M.C.C. 665, the Commission said, at page 677:

> "Similar conditions are found to a considerable extent in the long-distance moving of household goods. In this field, the shippers desire, and there probably is a necessity for, delivery of the furniture at destination in the shortest possible time. Many of the long-distance furniture vans are equipped with sleeper cabs and carry two drivers. The record is clear that this type of operation is necessary to enable prompt deliveries and that, under proper regulations, the use of sleeper cabs will not add to the hazards of operation.
>
> "Other instances could be enumerated which would show the economic need of permitting trucks to move continuously for a period of considerable duration. * * *"

In a subsequent report in *Ex Parte MC-2*, 6 M. C. C. 557, the Commission said at page 562:

> "At the argument before division 5, organized labor accepted the weekly limitation of 60 hours of duty, provided it was linked up with a daily limitation of 10 hours. The rules we shall prescribe, while in some respects less flexible than those drawn by the division, provide considerable more flexibility than would be possible if organized labor's position were accepted. Such flexibility in transportation operations is necessary to enable the rendering of service which the public interest requires. * * *"

In a still later report in *Ex Parte MC-2*, 11 M. C. C. 203, the Commission said, at page 209:

> "The witnesses testified that their labor costs represented from 40 to 50 per cent of their gross revenue. While many of the witnesses had no definite knowledge as to the ratio of drivers' wages to gross revenue, it seems clear that they equal approximately 25 per cent. Witnesses testified that, if the carriers are required to employ relief drivers on these routes, they will have to increase the total number of drivers, employed by from 25 to 33 1/3 per cent. If, as pointed out, the drivers' wages at the present time approximate 25 per cent of gross revenue, the increased costs would approximate from 6 1/4 to 8 1/3 per cent of gross revenue."
>
> "Witnesses submitted three exhibits which had been heretofore introduced in proceedings involving the fixing of rates. One of these exhibits was prepared by American Trucking Associations, Incorporated, from information obtained through questionnaires sent representative carriers, and the other two were exhibits prepared by our Bureau of Motor Carriers from reports submitted to us. These exhibits show that the net operating revenue of motor carriers in the sections to which the exhibits relate did not exceed 2 per cent of gross revenue. It therefore follows that, if the driving force must be increased to the extent indicated, many of the operations would be unprofitable and might be abandoned.

"The abandonment of operations of this character not only would do great harm to the motor-carrier industry, but shippers generally would be greatly inconvenienced. The ability of motor carriers to make overnight deliveries of less-than-carload freight has been of great value to the shipping interests of the country and has been one of the most important factors in the development of the motor-carrier industry."

It is known that no other agency has authority to prescribe flexible regulations. The existence of innumerable conflicting state regulations was known to Congress, and, as the District Court found, Congress preempted the field by enacting the Motor Carrier Act.

Appellants say that Congress had safety in mind, but they ignore other facts equally clear, and assume that Congress had nothing else in mind. These assumptions might have been foreclosed had a hearing been held on the petition.

Appellants fashion "straw men" out of conjured sociological considerations and the national unemployment problem. But nowhere in the Act is the Commission required to do or even permitted to do anything extending beyond the transportation matters outlined therein, and then it acts only after a finding and report relating the regulation to transportation by motor carriers.

Construction Contended for by Appellants Would Lead to Unconstitutional Results.

To construe Sec. 204 of the Motor Carrier Act in conjunction with Sec. 18 of the Fair Labor Standards Act to the end that states and municipalities can fix hours of service for employees of interstate carriers would be in the teeth of the decision of this court in *Panama Refining Co., et al. v. Ryan*, 293 U. S. 388. The regulations to be prescribed under Sec. 204 must be consistent with the definite legislative standards therein set forth, coupled with the further requirement under Sec. 225 that there must be a finding

and report by an administrative agency, and the still further requirement that the regulations must be reasonable. These standards and requirements insure the statutory lawfulness of the regulations. In contrast, Sec. 18 of the Fair Labor Standards Act confers unlimited authority on states and municipalities to prescribe more restrictive regulations without reference to any purpose or any standard, without any hearings or findings, without even the requirement that they be reasonable. In *Panama Refining Co.* v. *Ryan, supra*, this court, referring to Sec. 9(c) of the National Industrial Recovery Act, said, page 414:

> "The section purports to authorize the President to pass a prohibitory law. The subject to which this authority relates is defined. It is the transportation in interstate and (p. 415) foreign commerce of petroleum and petroleum products which are produced or withdrawn from storage in excess of the amount prohibited by state authority. Assuming, for the present purpose, without deciding, that the Congress has power to interdict the transportation of that excess in interstate and foreign commerce, the question whether that transportation shall be prohibited by law is obviously one of legislative policy. Accordingly, we look to the statute to see whether Congress has declared a policy with respect to that subject; whether Congress has set up a standard for the President's action; whether Congress has required any finding by the President in the exercise of the authority to enact the prohibition. * * * It does not attempt to control the production of petroleum products within a state. It does not seek to lay down rules for the guidance of state legislatures or state officers. It leaves to the states and to their constituted authorities, the determination of what production shall be permitted. It does not qualify the President's authority by reference to the basis or extent of the state's limitation of production *. * *. The Congress, in Sec. 9(c), thus declares no policy as to the transportation of the excess production. * * *
>
> (P. 420) "The point is not one of motives, but of constitutional authority, for which the basis of motives is not the substitute. * * *

(P. 421) "The Constitution provides that 'All legislative Powers here granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.' Art. 1, Sec. 1. * * * The Congress manifestly is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. * * *

(P. 432) "In creating such an administrative agency, the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performances of its function. * * * When, therefore, such an administrative agency is required, as a condition precedent to an order, to make a finding of facts, the validity of the order must rest upon the needed finding. If it is lacking, the order is ineffective."

It is elementary that no state has an inherent right to regulate interstate commerce; there can be no divided jurisdiction over interstate commerce; and when Congress has occupied the field, State coincidence is an ineffective as opposition. *Charleston & W. C. Ry. Co.* v. *Varnville Furn. Co.*, 237 U. S. 597, 604; *Southern Ry. Co.* v. *R. R. Comm. of Ind.*, 236 U. S. 439.

Commerce between the states has been confided exclusively to Congress and is not within the jurisdiction of the police power of the state unless placed there by congressional action. *Leisy* v. *Hardin*, 135 U. S. 100.

Viewing the situation in this light, Sec. 18 of the Fair Labor Standards Act cannot be construed as merely authorizing concurrent jurisdiction, but must be construed as a delegation to the states of administrative power over interstate commerce, and, as such, it would necessarily fall as an unlawful delegation of legislative power for lack of legislative standards.

An examination of Sec. 16 of the Fair Labor Standards Act discloses the severe penalties, both criminal and civil,

which are imposed for violation of that Act. There are no provisions whereby these penalties become effective upon or after any findings or determinations by either the Interstate Commerce Commission or the Administrator of the Fair Labor Standards Act. Presumably, they were effective upon the passage of the Fair Labor Standards Act. Nearly two years have passed since the Fair Labor Standards Act became effective, and the Commission has not even held a hearing for the purpose of determining what employees, such as machinists, inspectors, etc., might be subject to their jurisdiction with respect to safety, to which they claim their jurisdiction is limited.

In argument before the District Court, they conceded jurisdiction over all employees whose duties might be related to safety.

In addition to the alleged conflict in jurisdiction as between the Interstate Commerce Act and the Fair Labor Standards Act, there would be a further conflict between the Fair Labor Standards Act and the state and municipal regulations contemplated by Sec. 18 of the Fair Labor Standards Act. No motor carrier can possibly know or have any means of ascertaining the liabilities under both the criminal and civil provisions of Sec. 16 of the Fair Labor Standards Act. The construction contended for by appellants leads to an unconstitutional result by reason of the ambiguity resulting from application of both statutes. The construction contended for by appellees is the only construction which can escape the constitutional objections which would arise from a divided jurisdiction and the delegation of powers to state agencies under Sec. 18, and the unconstitutionality of the penal provisions of Sec. 16 on account of ambiguity.

The construction contended for by appellees should prevail in the light of the constitutional objections; because, as this court said in *U. S. v. Jin Fuey Moy*, 241 U. S. 394:

"A statute must be construed, if fairly possible, so as to avoid, not only the conclusion that it is unconstitutional, but also grave doubts upon the score."

Regulation of Qualifications.

Many statutes and regulations covering qualifications had nothing to do with highway safety but dealt with transportation and qualifications of employees from the standpoint of public health. The State of Oregon has regulations which cover all classes of persons handling food, and if they are suffering from a communicable disease, they are not permitted to work in any *building*, or *vehicle* occupied or used for the "production, preparation, manufacture, packing, storage, *distribution*, or *transportation* of foods." Among the employees or persons specifically named, are "any owner, employer, employee, operative, clerk, driver, or other person."

The State of Illinois has similar regulations. Under the Department of Public Health, the employment of any person suffering from communicable diseases in connection with the production or handling of foodstuffs, particularly milk or milk products, is prohibited.

The Ohio State regulations provide that "no employer shall require, permit or suffer any person to work nor shall any person work in a building, room, *vehicle* or other place occupied or used for the production, preparation, manufacture, handling, packing, storing, sale, *distribution or transportation* of food, who is afflicted with * * * any infectious or contagious disease."

New York State prohibits any person suffering from communicable diseases to be employed in any capacity, in connection with the handling of milk or cream or of any apparatus or *equipment* used in handling, storage, bottling, pasteurizing or *delivering* of milk or cream.

United States Department of Agriculture, Food and Drug Administration, provides that packers of shrimp "shall not knowingly employ in or about the establishment any person afflicted with infectious or contagious diseases."

The United States Department of Agriculture, Meat Inspection Regulations, provide "no establishment shall employ, in any department where any meat or meat product is handled or prepared, any person afflicted with tuberculosis or other communicable disease."

The Federal Meat Inspection Act was passed in 1907, and subsequently there have been numerous acts conferring authority on various government departments. These laws guard against the handling of foodstuffs by diseased persons, among such acts being the Food and Drug Act and regulations issued thereunder.

Congress knew that the federal laws and regulations prior to the Motor Carrier Act were limited to points of manufacture or preparation and did not cover transportation as was done by some of the states.

It would be idle to throw all kinds of safeguards around the production and processing of foodstuffs for interstate commerce, and then leave the bars down entirely when it comes to *transportation* of articles such as fresh meats, milk, cheese, etc., and also in connection with many vegetables and fruits which are eaten without being cooked.

The Commission prescribes rules governing the transportation of explosives and poisons by common and contract and private carriers subject to the Motor Carrier Act. The Transportation of Explosives Act applies to *common carriers* only and was passed in 1909. The Commission was given authority to prescribe rules and regulations. It was 25 years after the passage of that Act, before the issuance of rules and regulations to govern common carriers by motor vehicle. That lapse of time indicates that there was *nothing* in the legislative history to show that Congress had motor carriers in mind. The Commission fol-

lowed the letter of the law, without the aid of legislative history.

The Commission's rules not only provide how poisons should be packed for shipment, but where they should be loaded with respect to foodstuffs.

It should be deemed a necessary requirement that employees can read and write English, if the regulations relating to explosives and poison are to be effective. Such a requirement relates to qualifications with little relation to mere safety of operations.

The law requires the publication, quotation, billing and collection of exact rates. Tariffs are very complicated matters, and the public generally cannot read them. Can it be said that the Commission is without power to require the carriers to employ qualified employees?

Is it possible that there is need for state qualifications to prevent diseased persons from transporting foodstuffs in intrastate commerce, and yet no need for federal regulations covering interstate commerce?

There is nothing in the legislative history from which it may be inferred that Congress was either blind or indifferent to these matters, and the specific statutory authority to prescribe *qualifications* of employees clearly negatives any such inference.

The legislative history of the Motor Carrier Act so clearly shows the intent of Congress to provide for complete and exclusive regulation by the Commission that we venture to submit a quotation to illustrate the point.

The state regulatory commissions proposed to the committees conducting hearings on the Motor Carrier Act amendments which would have reserved police powers to the states, and such amendments were rejected. See Senate Committee hearings, page 165, and House Committee Hearings on H. R. 5262 (companion bill to S. 1629) page 60. After the committees refused to approve dual jurisdiction and conflicting regulations, an attempt was made to ac-

complish that purpose by amending the bill on the floor of the Senate. The amendment failed of passage.[12]

Upon this clear refusal by Congress to tolerate conflicting jurisdiction, the mere suggestion of difficulty on the part of the Commission is not enough to support the proposition that Congress intended to make interstate transportation subject to the conflicting provisions of the Fair Labor Standards Act.

CONCLUSION.

It is respectfully submitted that the decree of the District Court is in accordance with established law, the tenents of equity and the will of Congress and should be affirmed.

Respectfully submitted,

J. NINIAN BEALL,
ALBERT F. BEASLEY,
Attorneys for Appellees.

April, 1940.

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[12] Excerpts from Congressional Record, Tuesday, April 16, 1935—Debate on Motor Carrier Act, 1935—Senate.

Page 5953:

* * *

"Mr. Duffy: Mr. President, I offer the amendment which I send to the desk.

"The Vice-President: The amendment will be stated.

"The Chief Clerk: On page 3, after line 12, it is proposed to strike out down to line 5 on page 4 and in lieu thereof to insert the following:

"'(c) * * *; provided, however, that the laws enacted in any State and regulations thereunder that relate to the maintenance, protection, safety, or use of the highways therein, which do not discriminate against motor vehicles used in interstate commerce, shall not be deemed to be a burden on or an obstruction or impediment to interstate commerce, and the power to enact such laws and promulgate such regulations thereunder is hereby expressly recognized and confirmed to the respective states; * * *.'"

Page 5954:

"On a division, the amendment was *rejected.*"

APPENDIX.

Interstate Commerce Act, Part II.

Motor Carrier Act.

Declaration of policy and delegation of jurisdiction.

Sec. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

(b) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission.

Sec. 203. (a) As used in this part—

* * * *

(19) The "services" and "transportation" to which this part applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith.

General Duties and Powers of the Commission.

Sec. 204. (a) It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event that such requirements are established, the term "motor carrier" shall be construed to include private carriers of property by motor vehicle in the administration of Sections 204(d) and (e); 205; 220; 221; 222(a), (b), (d), (f), and (g); and 224.

* * * *

(6) To administer, execute, and enforce all provisions of this part, to make all necessary orders in connection therewith, and to prescribe rules, regulations, and procedure for such administration; and

* * * *

(b) The provisions of any code of fair competition for any industry embracing motor carriers or for any subdivision thereof approved pursuant to the National Industrial Recovery Act or any present or future Act amendatory thereof, or supplementary thereto, or in substitution therefor, which is in conflict or inconsistent with any action under the provisions of this part, shall have no force or effect after this section becomes effective.

(c) The Commission may from time to time establish such just and reasonable classifications of brokers or of groups of carriers included in the term "common carrier by motor vehicle," or "contract carrier by motor vehicle," as the special nature of the services performed by such carriers or brokers shall require; and such just and reasonable rules, regulations, and requirements, consistent with the provisions of this part, to be observed by the carriers or brokers so classified or grouped, as the Commission deems necessary or desirable in the public interest.

Sec. 205. * * * *

(h) Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under Part 1: *Provided*, That, where the Commission, in respect of any matter arising under this part, shall have issued a negative order solely because of a supposed lack of power, any such party in interest may file a bill of complaint with the appropriate District Court of the United States, convened under the Urgent Deficiency Appropriations Act, October 22, 1913, and such court, if it determines that the Commission has such power, may enforce by writ of mandatory injunction the Commission's taking of jurisdiction.

* * * * *

(k) The Commission is authorized to employ, and to fix the compensation of, such experts, assistants, special agents, examiners, attorneys, and other employees as in its judgment may be necessary or advisable for the convenience of the public and for the effective administration of this part.

Rates, Fares, and Charges of Common Carriers by Motor Vehicle.

SEC. 216. (a) It shall be the duty of every common carrier of passengers by motor vehicle to establish reasonable through routes with other such common carriers and to provide safe and adequate service, equipment, and facilities for the transportation of passengers in interstate or foreign commerce; to establish, observe, and enforce just

and reasonable individual and joint rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers in interstate or foreign commerce; and in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers.

(b) It shall be the duty of every common carrier of property by motor vehicle to provide safe and adequate service, equipment, and facilities for the transportation of property in interstate or foreign commerce; to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate or foreign commerce.

APPENDIX.

[PUBLIC—No. 718—75TH CONGRESS]

[CHAPTER 676—3D SESSION]

[S. 2475]

AN ACT

To provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Labor Standards Act of 1938".

Finding and Declaration of Policy.

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

Minimum Wages.

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

(4) at any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8.

(b) This section shall take effect upon the expiration of one hundred and twenty days from the date of enactment of this Act.

Maximum Hours.

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

Exemptions.

SEC. 13. (a) The provisions of sections 6 and 7 shall not apply with respect to (1) any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined and delimited by regulations of the Administrator); or (2) any employee engaged in any retail or *service establishment* the greater part of whose selling or servicing is in intrastate commerce; or (3) any employee employed as a seaman; or (4) any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act; or (5) any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or *distributing* the above products or byproducts thereof; or (6) any employee employed in agriculture; or (7) any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under section 14; or (8) any employee employed in connection with the publication of any weekly or semiweekly newspaper with a circulation of less than three thousand the major part of which circulation is within the county where printed and published; or (9) any employee of a street, suburban, or interurban electric railway, or local trolley or motor bus carrier, not included in other exemptions contained in this section; or (10) to any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing, ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products.

(b) The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act.

Prohibited Acts.

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14;

Penalties.

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

Relation to Other Laws.

SEC. 18. No provision of this Act or of any order thereunder shall excuse noncompliance with any Federal or State law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this Act or a maximum workweek lower than the maximum workweek established under this Act, and no provision of

this Act relating to the employment of child labor shall justify noncompliance with any Federal or State law or municipal ordinance establishing a higher standard than the standard established under this Act. No provision of this Act shall justify any employer in reducing a wage paid by him which is in excess of the applicable minimum wage under this Act, or justify any employer in increasing hours of employment maintained by him which are shorter than the maximum hours applicable under this Act.

APPENDIX.

Approved Code No. 278

Code of Fair Competition

for the

TRUCKING INDUSTRY

As Approved on February 10, 1934

by

President Roosevelt

Economic Effect of the Code.

During the past decade the transportation of property over the public highways has assumed significant proportions. Today it constitutes an integral part of the transportation system of the country. The Code of Fair Competition for the Trucking Industry relates to this portion of the transportation system. By reason of special circumstances, however, certain highway transportation operations have been exempted from the provisions of this Code. Having taken these exemptions into account, the trucking operations which remain subject to the provisions of the Code are conservatively estimated to utilize about 750,000 vehicles and to give employment to approximately 1,200,000 workers.

Under the Code as recommended, it is estimated that the Trucking Industry will give employment to approximately 300,000 additional wage earners, representing an increase of about 25 per cent over the employment prevailing prior to the inauguration of the National Industrial Recovery program. This reemployment, it is estimated, will increase the annual pay roll of the codified Industry by about $260,000,000, or about 27 per cent.

In contrast with other major forms of transportation, the Trucking Industry is typically a small unit, owner-operated and flexible type of transportation activity. The natural operation of these factors has produced a disorganized condition within the Industry, resulting in unstable competitive conditions. Not only has this situation tended to produce destructive competitive conditions within the Industry, but

the influences have extended substantially beyond the Industry itself and have created particularly complex problems with relation to the coordination and regulation of various transportation agencies. To date no complete and accurate data have been available to serve as a basis for the solution of these complex problems.

Article V—Hours and Wages.

A. Hours.

1. No employee in clerical or office work except rate clerks and dispatchers shall be permitted to work in excess of forty (40) hours in any one week, nor more than six (6) days in any seven (7) day period.

2. No other employees except those driving vehicles and their helper or helpers on the vehicle shall be permitted to work in excess of forty-eight (48) hours per week, averaged over a period of three (3) weeks, with a maximum of fifty-four (54) hours in any one week, nor more than twelve (12) days out of fourteen (14) days, provided, however, that they shall be paid at the rate of one and one third (1 1/3) their normal rate for all hours worked in excess of eight (8) hours in any one day or forty-eight (48) hours in any one week.

3. No person driving a vehicle or his helper or helpers on the vehicle shall be permitted to work in excess of one hundred eight (108) hours in any consecutive two (2) week period, nor more than one hundred ninety-two (192) hours in any consecutive four (4) week period, nor more than twelve (12) days in any fourteen (14) day period; except as herein otherwise provided, and they shall be paid at the rate of one and one-third (1 1/3) their normal rate for all hours worked in excess of forty-eight (48) hours in any one week, except in cases of emergency demand falling under Section 5 hereof.

5. When seasonal demands arise involving movements of perishable goods or seasonal crops, or in case of emergency demands, an employee may, with the approval in advance of the appropriate State or Regional Code Authority and the Administrator, be permitted to work an additional twelve (12) hours in any two (2) week period beyond one hundred and eight (108) hours, which additional hours need not be

averaged out within the consecutive four (4) week period. The total period for which seasonal or emergency demand may be considered to exist is to be limited to three (3) consecutive months for any type of haulage in any area or for an individual employee, except that the overtime provision in Section 3 may be stayed by the Administrator for a longer period than three (3) months for those operations where State laws restricting tonnage create an emergency lasting for a longer period.

7. The maximum hours provided above shall not apply to employees engaged in a managerial or executive capacity who receive thirty-five ($35.00) dollars per week or more in the North, or thirty ($30.00) dollars or more in the South, or solicitors performing no manual work, or station managers, where such employees are intermittently employed. Persons engaged solely as watchmen shall not be permitted to work in excess of fifty-six (56) hours in any one week nor more than six (6) days in any seven (7) day period.

8. All time spent by any employee on or in any vehicle shall be considered time worked, regardless of whether such employee is engaged in driving or in the performance of other labor, unless such employee is a relief employee off duty engaged on a vehicle equipped with a sleeping compartment. A committee constituted in like manner as the National Industrial Relations Board shall, within ninety (90) days after the effective date of this Code, submit definitions and regulations governing "off duty" and governing the practice known as "dead-heading", to be effective when approved by the Administrator.

pp. 4-7,

SUPREME COURT OF THE UNITED STATES.

No. 713.—October Term, 1939.

The United States of America, Interstate Commerce Commission, et al., Appellants, *vs.* The American Trucking Associations, Inc., et al.	Appeal from the District Court of the United States for the District of Columbia.

[May 27, 1940.]

Mr. Justice Reed delivered the opinion of the Court.

This appeal requires determination of the power of the Interstate Commerce Commission under the Motor Carrier Act, 1935, to establish reasonable requirements with respect to the qualifications and maximum hours of service of employees of motor carriers, other than employees whose duties affect safety of operation.

After detailed consideration, the Motor Carrier Act, 1935, was passed.[1] It followed generally the suggestion of form made by the Federal Coordinator of Transportation.[2] The difficulty and wide scope of the problems raised by the growth of the motor carrier industry were obvious. Congress sought to set out its purpose and the range of its action in a declaration of policy which covered the preservation and fostering of motor transportation in the public interest, tariffs, the coordination of motor carriage with other forms of transportation and cooperation with the several states in their efforts to systematize the industry.[3]

While efficient and economical movement in interstate commerce is obviously a major objective of the Act,[4] there are numerous pro-

[1] 49 Stat. 543.

[2] S. Doc. No. 152, 73rd Cong., 2d Sess., Regulation of Transportation Agencies, p. 350. See p. 25, for discussion of the preliminary steps of motor carrier regulation. Hearings on Regulation of Interstate Motor Carriers, H. R. 5262 and H. R. 6016, before the House Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess.; Hearings on S. 1629, Senate Committee on Interstate Commerce, 74th Cong., 1st Sess.

[3] Section 202; Maurer v. Hamilton, No. 380, this Term, decided April 22, 1940.

[4] Sections 202, 216, 217, 218.

visions which make it clear that Congress intended to exercise its powers in the non-transportation phases of motor carrier activity.[5] Safety of operation was constantly before the committees and Congress in their study of the situation.[6]

The pertinent portions of the section of the Act immediately under discussion read as follows:

SEC. 204(a). It shall be the duty of the Commission—

(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment . . . .

Shortly after the approval of the Act, the Commission on its own motion undertook to and did fix maximum hours of service for "employees whose functions in the operation of motor vehicles make such regulations desirable because of safety considerations."[7] A few months after this determination, the Fair Labor Standards Act was enacted.[8] Section 7 of this act limits the workweek at the normal rate of pay of all employees subject to its terms and Section 18 makes the maximum hours of the Fair Labor Standards Act subject to further reduction by applicable federal or state law or municipal ordinances. There were certain employees excepted.

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[5] Services, § 203(a)(19); brokers, § 203(a) § 204(a)(4); security issues, § 214; insurance, § 215; accounts, records reports, § 220.

[6] Maurer v. Hamilton, *supra*; Regulation of Transportation Agencies, *supra*, Highway and Safety Regulations, p. 32; Hearings on S. 1629, *supra*, pp. 122-122, 184.

[7] Ex parte No. MC-2, 3 M. C. C. 665, 667.

[8] 52 Stat. 1060.

however, from these regulations by Section 13(b). It reads as follows:

SEC. 13(b). The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; . . . .

This exemption brought sharply into focus the coverage of employees by Motor Carrier Act, Section 204(a). Clerical, storage and other non-transportation workers are under this or the Fair Labor Standards Act, dependent upon the sweep of the word employee in this act. The Commission again examined the question of its jurisdiction and in *Ex parte No. MC-28*[9] again reached the conclusion that its power under "section 204(a)(1) and (2) is limited to prescribing qualifications and maximum hours of service for those employees . . . whose activities affect the safety of operation." It added: "The provisions of section 202 evince a clear intent of Congress to limit our jurisdiction to regulating the motor-carrier industry as a part of the transportation system of the nation. To extend that regulation to features which are not characteristic of transportation nor inherent in that industry strikes us as an enlargement of our jurisdiction unwarranted by any express or implied provision in the act, which vests in us all the powers we have."[10] The Wage and Hour Division of the Department of Labor arrived at the same result in an interpretation.[11]

Shortly thereafter appellees, an association of truckmen and various common carriers by motor, filed a petition with the Commission in the present case seeking an exercise of the Commission's jurisdiction under Section 204(a) to fix reasonable requirements "with respect to qualifications and maximum hours of service of all employees of common and contract carriers, except employees whose duties are related to safety of operations; (3) to disregard its report and order in *Ex parte MC-28*."[12] The Commission reaffirmed its position and denied the petition. The appellees petitioned a

[9] 13 M. C. C. 481, 488.

[10] 13 M. C. C. 481, 489.

[11] Interpretative Bulletin No. 9, Wage & Hour Manual (1940) 168.

[12] Section 204(a)(1), (6) and (7)(e); Rules of Practice I. C. C., April 1, 1936, Rule XV.

three-judge district court to compel the Commission to take jurisdiction and consider the establishment of qualifications and hours of service of all employees of common and contract carriers by motor vehicle.[13] The Administrator of the Wage and Hour Division was permitted to intervene.[14] The district court reversed the Commission, set aside its order and directed it to take jurisdiction of the appellees' petition. A direct appeal to this Court was granted.[15]

In the broad domain of social legislation few problems are enmeshed with the difficulties that surround a determination of what qualifications an employee shall have and how long his hours of work may be. Upon the proper adjustment of these factors within an industry and in relation to competitive activities may well depend the economic success of the enterprises affected as well as the employment and efficiency of the workers. The Motor Carrier Act lays little emphasis upon the clause we are called upon now to construe, "qualifications and maximum hours of service of employees." None of the words are defined by the Section, 203, devoted to the explanation of the meaning of the words used in the Act. They are a part of an elaborate enactment drawn and passed in an attempt to adjust a new and growing transportation service to the needs of the public. To find their content, they must be viewed in their setting.

In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress.[16] There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning

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[13] Section 205(h), Motor Carrier Act; Urgent Deficiencies Act, 38 Stat. 220, 28 U. S. C. §§ 47, 47a.

[14] Cf. S. E. C. v. U. S. Realty & Improvement Co., No. 796, this Term, decided today.

[15] Judicial Code § 238; 38 Stat. 219; 49 Stat. 543, § 205(h).

[16] Story, J., in Minor v. Mechanics Bank, 1 Peters 46, 64: "But no general rule can be laid down upon this subject, further than, that, that exposition ought to be adopted in this, as in other cases, which carries into effect the true intent and object of the legislature in the enactment." Pennington v. Coxe, 2 Cranch 33, 59; Jame's v. Milwaukee, 16 Wall. 159, 161; Atkins v. Disintegrating Co., 18 Wall. 272, 301; White v. United States, 191 U. S. 545, 551; Ozawa v. United States, 260 U. S. 178, 194; United States v. Stone & Downer Co., 274 U. S. 225, 239; Gulf States Steel Co. v. United States, 287 U. S. 32, 45; Royal Indem. Co. v. American Bond & M. Co., 289 U. S. 165, 169; Lincoln v. Ricketts, 297 U. S. 373, 376; Foster v. United States, 303 U. S. 118, 120.

certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.[17]

There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning.[18] When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act.[19] Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole"[20] this Court has followed that purpose, rather than the literal words.[21] When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use,[22] however clear the words may appear on "superficial examination."[23] The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views

[17] Cf. Davies, The Interpretation of Statutes in the Light of their Policy by the English Courts, 35 Columbia Law Review 519; Radin, Statutory Interpretation, 43 Harvard Law Review 863; Landis, A Note on "Statutory Interpretation", 43 Harvard Law Review 886; R. Powell, Construction of Written Instruments, 14 Indiana Law Journal 199, 309, 324; Jones, The Plain Meaning Rule, 25 Washington University Law Quarterly 2.

[18] Taft *v.* Commissioner, 304 U. S. 351, 359; Helvering *v.* City Bank Co., 296 U. S. 85, 89; Wilbur *v.* United States, 284 U. S. 231, 237; Crooks *v.* Harrelson, 282 U. S. 55, 60; United States *v.* Mo. Pac. R. R., 278 U. S. 269, 278; Van Camp & Sons *v.* Am. Can. Co., 278 U. S. 245, 253; Caminetti *v.* United States, 242 U. S. 470, 490; Penna. R. R. *v.* International Coal Co., 230 U. S. 184, 199.

[19] Armstrong Co. *v.* Nu-Enamel Corp., 305 U. S. 315, 332; Sorrells *v.* United States, 287 U. S. 435, 446; United States *v.* Ryan, 284 U. S. 167, 176.

[20] Ozawa *v.* United States, 260 U. S. 178, 194.

[21] Helvering *v.* Morgan's, Inc., 293 U. S. 121, 126; Johnson *v.* Southern Pacific, 196 U. S. 1, 14; Popovici *v.* Agler, 280 U. S. 379; Smiley *v.* Holm, 285 U. S. 355; Williams *v.* United States, 289 U. S. 553; Maurer *v.* Hamilton, *supra*, pp. 10, 13, preliminary print.

[22] Boston Sand & Gravel Co. *v.* United States, 278 U. S. 41, 48.

[23] Helvering *v.* New York Trust Co., 292 U. S. 455, 465.

or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion.[24] Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown."[25]

The language here under consideration, if construed as appellees contend, gives to the Commission a power of regulation as to qualifications and hours of employees quite distinct from the settled practice of Congress. That policy has been consistent in legislating for such regulation of transportation employees in matters of movement and safety only. The Hours of Service Act[26] imposes restrictions on the hours of labor of employees "actually engaged in or connected with the movement of any train." The Seamen's Act[27] limits employee regulations under it to members of ships' crews. The Civil Aeronautics Authority has authority over hours of service of employees "in the interest of safety."[28] It is stated by appellants in their brief with detailed citations, and the statement is uncontradicted, that at the time of the passage of the Motor Vehicle Act "forty states had regulatory measures relating to the hours of service of employees," and every one "applied exclusively to drivers or helpers on the vehicles." In the face of this course of legislation, coupled with the supporting interpretation of the two administrative agencies concerned with its interpretation, the Interstate Commerce Commission and the Wage and Hour Division, it cannot be said that the word "employee" as used in Section 204(a) is so clear as to the workmen it embraces that we would accept its broad

[24] Cf. Committee on Ministers' Powers Report (Cmd. 4060, 1932), p. 135.

[25] United States v. Jefferson Electric Co., 291 U. S. 386, 396; United States v. Arizona, 295 U. S. 174, 188, 191; Keifer & Keifer v. R. F. C., 306 U. S. 381, 394; Ozawa v. United States, *supra*.

[26] 34 Stat. 1415.

[27] 38 Stat. 1164, 1169, 1170-84.

[28] 52 Stat. 1007, § 601(a)(5). This authority has apparently been exercised only as to pilots and copilots. Dept. of Commerce, Bureau of Air Commerce, Civil Air Regulations, No. 61, Scheduled Airline Rules (Interstate), as amended to May 31, 1938, §§ 61.518-61.5185.

est meaning. The word, of course, is not a word of art. It takes color from its surroundings and frequently is carefully defined by the statute where it appears.[29]

We are especially hesitant to conclude that Congress intended to grant the Commission other than the customary power to secure safety in view of the absence in the legislative history of the Act of

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[29] That the word "employees" is not treated by Congress as a word of art having a definite meaning is apparent from an examination of recent legislation. Thus the Social Security Act specifically provides that "The term 'employee' includes an officer of a corporation," (42 U. S. C. § 1301(a)(c)) while the Fair Labor Standards Act specifically exempts "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity. . . ." (29 U. S. C. § 213(a)(1)). In the Railroad Unemployment Insurance Act, Congress expressly recognized the variable meaning of employee even when defined at length and used only in a single act: " . . . 'employee' (except when used in phrases establishing a different meaning) means . . . " (45 U. S. C. § 351(d)). In a statute permitting heads of departments to settle claims up to $1000 arising from the negligence of "employees of the Government," Congress gives recognition to the fact that the [illegible] is not on its face all-inclusive by providing: "'Employee' shall include enlisted men in the Army, Navy and Marine Corps." (31 U. S. C. §§ 215, 216.) See also the varying definitions of "employees" in the following statutes: Railroad Retirement Act, 45 U. S. C. § 228a(b)(c); Interstate Commerce Act, 49 U. S. C. § 1(7); Emergency Railroad Transportation Act, 49 U. S. C. § 251(f); Communications Act, 47 U. S. C. § 210; National Labor Relations Act, 29 U. S. C. § 152(3); Maritime Labor Relations Act, 46 U. S. C. § 1253(c); Classification Act of 1923 (Civil Service), 5 U. S. C. § 662; U. S. Employees' Compensation Act, 5 U. S. C. § 790; Longshoremen's and Harbor Workers' Compensation Act, 33 U. S. C. § 902; Boiler Inspection Act, 45 U. S. C. § 22; Railway Labor Act, 45 U. S. C. § 151(5).

Where the term "employee" has been used in statutes without particularized definition it has not been treated by the courts as a word of definite content. See Metcalf & Eddy v. Mitchell, 269 U. S. 514, 520 (consulting engineers performing services for states, municipalities, and water districts held not to be "employees" under statute exempting "officers and employees under . . . any State, . . . or any local subdivision thereof" from the income tax); Waskey v. Hammer, 223 U. S. 85 (mineral surveyor, appointed by the surveyor but paid by private persons, is within prohibition of statute prohibiting "employés in the General Land Office" from purchasing public land); Nashville, C. & St. L. Ry. v. Railway Employees' Dept. etc., 93 F. (2d) 340 (furloughed railroad workers entitled to priority in rehiring held "employees" within meaning of Railway Labor Act), discussed in 51 Harv. L. Rev. 1299; Latta v. Lonsdale, 107 Fed. 585 (attorney not "employee" within meaning of statute giving "employees" preference against assets of insolvent corporations); Vane v. Newcombe, 132 U. S. 220 (contractor who built lines for telegraph company not "employee" within statute giving employees liens against corporate property); Malcomson v. Wapoo Mills, 86 Fed. 192 (same); cf. United States v. Griffith, 2 F. (2d) 925 (War Department clerk receiving disability compensation held employee of government within common law rule of the District of Columbia that employee of a litigant cannot be a member of jury); see also, Hull v. Phila. & Reading Ry., 252 U. S. 475; Louisville etc. R. R. v. Wilson, 138 U. S. 501; Campbell v. Commissioner, 87 F. (2d) 128; Burnet v. Jones, 50 F. (2d) 14; Burnet v. McDonough, 46 F. (2d) 944.

any discussion of the desirability of giving the Commission broad and unusual powers over all employees. The clause in question was not contained in the bill as introduced.[30] Nor was it in the Coordinator's draft.[31] It was presented on the Senate floor as a committee amendment following a suggestion of the Chairman of the Legislative Committee of the Commission, Mr. McManamy.[32] The committee reports and the debates contain no indication that a regulation of the qualifications and hours of service of all employees was contemplated; in fact the evidence points the other way. The Senate Committee's report explained the provisions of Section 204(a)(1), (2) as giving the commission authority over common and contract carriers similar to that given over private carriers by Section 204(a)(3).[33] The Chairman of the Senate Committee ex-

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[30] S. 1629, 74th Cong., 1st Sess.

[31] S. Doc. 152, 73rd Cong., 2nd Sess., p. 352, § 304(a)(1).

[32] See the testimony of Mr. McManamy in Hearings on S. 1629 before the Senate Committee on Interstate Commerce, 74th Cong., 1st Sess., pp. 122, 123:

"The regulation of the hours of service of bus and truck operators is far more important from a safety standpoint than the regulation of the hours of service of railroad employees because the danger is greater. . . . . This could be accomplished by inserting in section 304(a)(1) and (2), lines 9 and 15, page 8, following the word 'records' in both lines, the words which appear in S. 394, as follows: 'qualifications and maximum hours of service of employees.'"

The clause in question came from § 2(a)(1) of S. 394, 74th Cong., 1st Sess., a subsection otherwise substantially like the corresponding subsection in S. 1629.

Senator Wheeler, Chairman of the Committee on Interstate Commerce and sponsor of the bill, explained the provision on the floor of the Senate: "[T]he committee amended paragraphs (1) and (2) [of § 204] to confer power on the Commission to establish reasonable requirements with respect to the qualifications and maximum hours of service of employees of common and contract carriers, . . . This suggestion came to us, I think, from the chairman of the legislative committee of the Interstate Commerce Commission. . . .

"In order to make the highways more safe, and so that common and contract carriers may not be unduly prejudiced in their competition with peddler trucks and other private operators of motor trucks, a provision was added in subparagraph 3 giving the Commission authority to establish similar requirements with respect to the qualifications and hours of service of the employees of such operators. . . ." 79 Cong. Rec. 5652.

[33] S. Rep. 482, 74th Cong., 1st Sess. The report stated: "No regulation is proposed for private carriers except that an amendment adopted in committee authorizes the Commission to regulate the 'qualifications and maximum hours of service of employees and safety of operation and equipment' of private carriers of property by motor vehicle in the event that the Commission determines there is need for such regulation. Other amendments adopted by the committee confer like authority upon the Commission with respect to common and contract carriers." Safety of operation and equipment was in the original bill.

pressed the same thought while explaining the provisions on the floor of the Senate.[34] When suggesting the addition of the clause, the Chairman of the Commission's Legislative Committee said: " . . . . it relates to safety."[35] In the House the member in charge of the bill characterized the provisions as tending "greatly to promote careful operation for safety on the highways," and spoke with assurance of the Commission's ability to "formulate a set of reasonable rules . . . including therein maximum labor-hours service on the highway."[36] And in the report of the House Committee a member set out separate views criticizing the delegation of discretion to the Commission and proposing an amendment providing for an eight-hour day for "any employee engaged in the operation of such motor vehicle."[37]

The Commisison and the Wage and Hour Division, as we have said, have both interpreted Section 204(a) as relating solely to safety of operation. In any case such interpretations are entitled to great weight. This is peculiarly true here where the interpretations involve "contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new."[38] Furthermore, the Commission's interpretation gains much persuasiveness from the fact that it was the Commission which suggested the provisions' enactment to Congress.[39]

It is important to remember that the Commission has three times concluded that its authority was limited to securing safety of operation. The first interpretation was made on December 29, 1937, when the Commission stated: " . . . until the Congress shall have given us a more particular and definite command in the premises, we shall limit our regulations concerning maximum hours of service to those employees whose functions in the operation of motor vehicles make such regulations desirable because of safety

[34] See last paragraph of remarks of Senator Wheeler, note 32 *supra*.
[35] Hearings, note 32 *supra*.
[36] 79 Cong. Rec. 12206.
[37] H. R. Rep. No. 1645, 74th Cong., 1st Sess.
[38] Norwegian Nitrogen Co. *v.* United States, 288 U. S. 294, 315.
[39] Hassett *v.* Welch, 303 U. S. 303, 310.

considerations."[40] This expression was half a year old when Congress enacted the Fair Labor Standards Act with the exemption of Section 13(b)(1). Seemingly the Senate at least was aware of the Commission's investigation of its powers even before its interpretation was announced.[41] Under the circumstances it is unlikely indeed that Congress would not have explicitly overruled the Commission's interpretation had it intended to exempt others than employees who affected safety from the Labor Standards Act.

It is contended by appellees that the difference in language between subsections (1) and (2) and subsection (3) is indicative of a congressional purpose to restrict the regulation of employees of private carriers to "safety of operation" while inserting broader authority in (1) and (2) for employees of common and contract carriers. Appellants answer that the difference in language is explained by the difference in the powers. As (1) and (2) give powers beyond safety for service, goods, accounts and records, language limiting those subsections to safety would be inapt.

Appellees call our attention to certain pending legislation as sustaining their view of the congressional purpose in enacting the Motor Carrier Act. We do not think it can be said that the action of the Senate and House of Representatives on this pending transportation legislation throws much light on the policy of Congress or the meaning attributed by that body to Section 204(a). Aside from the very pertinent fact that the legislation is still unadopted, the legislative history up to now points only to a hesitation to determine a controversy as to the meaning of the present Motor Carrier Act, pending a judicial determination.[42]

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[40] Ex parte No. MC-2, 3 M. C. C. 665, 667.

[41] 81 Cong. Rec. 7875.

[42] The pending legislation is S. 2009, 76th Cong., 1st Sess., 84 Cong. Rec. 3509. As to the point here under discussion, the report of the Senate Committee said: "Paragraph (1) of section 34 of the bill is based on the provisions of subparagraphs (1), (2), and (3) of section 204(a) of the Motor Carrier Act. In the original draft, there was inserted at the beginning of the paragraph the clause 'in order to promote safety of operations,' thus making clear that the Commission's power to regulate qualifications and maximum hours of service of employees is confined to those who have anything to do with safety of operation. This is a question with respect to which considerable doubt seems to have arisen under the wording of the present law. Upon the strenuous objection of the truckers claiming conflict between this law and the Fair Labor Standards Act, the bill [i. e., the committee amendment] restores the law to the present provisions of the Motor Carrier Act." S. Rep. No. 433, 76th Cong., 1st Sess., p. 24. The bill passed the Senate. The House bill left §204(a)(1), (2) and (3) of the present act unchanged. 84 Cong. Rec. 9459; H. R. Rep. No. 1217, 76th Cong., 1st Sess., 84 Cong. Rec. 10125.

One amendment made to the then pending Motor Carrier Act has relevance to our inquiry. Section 203(b) reads as set out in the note below.[43] The words, "except the provisions of section 204

While the bills were in conference the Chairman of the Legislative Committee of the Interstate Commerce Commission sent to the chairmen of the House and Senate Committees a letter on the House and Senate bills which suggested that both bills explicitly limit the Commission's jurisdiction over qualifications and hours of service of employees to considerations of safety. The letter stated: "While the subsection [in the Senate bill] follows the existing language of section 204 . . . . , a controversy has arisen in regard to the meaning of that language. . . . This controversy has now reached the Supreme Court. We think it may well be determined in this new legislation. In our judgment, if restrictions on hours of labor for social and economic reasons are to be imposed, this should be done by Congress, and no duty in that respect should be delegated to the Commission, which has no experience which particularly fits it for the performance of such a duty. Our authority over qualifications and hours of service of employees should, therefore, be confined to the needs of safety in operation. . . . ." On April 26, 1940, the House conferees reported to the House a compromise bill agreed on by the conference committee which left § 204(a)(1), (2), and (3) of the Motor Carrier Act unamended. 86 Cong. Rec. 7847; H. R. Rep. No. 2016, 76th Cong., 3d Sess. On May 9, 1940, the House because of disagreement with sections of this bill not here relevant voted to recommit the bill to the conference committee. 86 Cong. Rec. 8986.

[43] "(b) Nothing in this part, *except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment* shall be construed to include (1) motor vehicles employed solely in transporting school children and teachers to or from school; or (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; or (3) motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroad or other common carrier stations; or (4) motor vehicles operated, under authorization, regulation, and control of the Secretary of the Interior, principally for the purpose of transporting persons in and about the national parks and national monuments; or (4a) motor vehicles controlled and operated by any farmer, and used in the transportation of his agricultural commodities and products thereof, or in the transportation of supplies to his farm; or (4b) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended; or (5) trolley busses operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service; or (6) motor vehicles used exclusively in carrying livestock, fish (including shell fish), or agricultural commodities (not including manufactured products thereof); or (7) motor vehicles used exclusively in the distribution of newspapers; nor, unless and to the extent that the Commission shall from time to time find that such application is necessary to carry out the policy of Congress enunciated in section 202, shall the provisions of this part, *except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment* apply to: (8) The transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that

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